

No. 10131

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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COMMISSIONER OF INTERNAL REVENUE,  
Petitioner,

vs.

ROSE B. LARSON,

Respondent.

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Transcript of the Record


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Upon Petition to Review a Decision of the  
United States Board of Tax Appeals

FILED

JUL 10 1942

PAUL P. O'BRIEN,  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## Appearances:

For Taxpayer:

ISHAM N. SMITH

H. B. JONES

GEO. C. KINNEAR

For Commissioner:

B. H. NEBLETT

CLYDE R. MAXWELL

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## DOCKET ENTRIES

1937

Apr. 23—Petition received and filed. Taxpayer notified. (Fee paid.)

Apr. 23—Copy of petition served on General Counsel.

May 17—Answer filed by General Counsel.

May 20—Copy of answer served on taxpayer.

1938

Aug. 1—Hearing set Sept. 19, 1938, Seattle, Washington.

Sept. 2—Motion for a continuance filed by taxpayer. 9/6/38 granted.

1940

Aug. 29—Hearing set Nov. 11, 1940, in Seattle, Washington.

Nov. 12—Hearing had before Mr. Hill on merits. Submitted. Petitioner moves to amend petition—granted. Dockets 88813 and 14

consolidated for hearing. Appearance of H. B. Jones and George C. Kinnear filed. Amended petition and answer to amended petition filed. Reply filed and served. Stipulation of facts filed. Briefs due in 60 days. Replies in 30 days.

Dec. 11—Transcript of hearing 11/12/40 filed.

1941

Jan. 6—Motion for extension of 30 days to file brief filed by General Counsel. 1/7/41 granted.

Jan. 15—Stipulation as to deficiency notice in evidence—Exhibit No. 10—is No. 104214 filed.

Feb. 7—Brief filed by taxpayer.

Feb. 10—Brief filed by General Counsel.

Feb. 11—Copy of brief served on General Counsel.

Mar. 3—Reply brief filed by General Counsel.

March 10—Reply brief filed by taxpayer. 3/10/41 copy served on General Counsel.

July 24—Findings of fact and opinion rendered. Hill, #2. Decision will be entered under Rule 50. 7/29/41 copy served.

Nov. 7—Computation of deficiency filed by General Counsel.

Nov. 8—Hearing set Dec. 10, 1941, on settlement.

Nov. 10—Consent to settlement filed by taxpayer.

Nov. 13—Decision entered. Hill, Division 2.

1942

Feb. 2—Petition for review by U. S. Circuit Court of Appeals, 9th Circuit, with assignments of error filed by General Counsel.

Feb. 11—Proof of service filed by General Counsel.

Feb. 13—Proof of service filed by General Counsel.

Mar. 9—Certified copy of order from the 9th circuit extending the time to June 12, 1942, in which to complete and transmit the record filed.

Apr. 28—Statement of points filed by General Counsel, with proof of service thereon.

Apr. 28—Agreed statement of evidence filed.

Apr. 28—Agreed designation of contents of record filed, with proof of service thereon.

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United States Board of Tax Appeals

Docket No. 88813

ROSE B. LARSON,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### PETITION

The above named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of



deficiency IT:E:2 JBS-90D dated January 27, 1937, and as a basis for her proceeding alleges as follows:

1. The petitioner is an individual whose place of residence is Yakima, Washington and she is the widow of A. E. Larson, deceased June 7, 1934.

2. The notice of deficiency (a copy of which is attached and marked Exhibit "A") was mailed to the petitioner on January 27, 1937.

3. The taxes in controversy are income taxes for the year 1933 and 1934. For 1933 the amount in controversy is \$1514.29 and for 1934 the amount in controversy is \$68,485.58.

4. For the year 1933 the income tax return of the petitioner reflected one-half of the net income of the community composed of A. E. Larson, husband, and Rose B. Larson, wife, and for the year 1934 the income tax return of the petitioner reflected one-half of the net income of the community of A. E. Larson, husband, and Rose B. Larson, wife, for the period January 1, 1934 to June 7, 1934.

5. For the year 1933 the determination of tax set forth in said notice of deficiency with respect to the amount of tax disputed is based upon errors of the Commissioner as follows:

(a) The holding by the Commissioner that notes held against the Daisy Mining And Milling Company represented investments in that company.

(b) Holding by the Commissioner that said notes had not been ascertained to be worthless.



(c) Holding by the Commissioner that said notes were not allowable deductions. [1\*]

6. For the year 1934 and with respect to that portion of the tax which is in controversy, the determination thereof as set forth in said notice of deficiency is based upon the following errors of the Commissioner:

(d) The Commissioner errs in holding that the surviving spouse of a community estate is taxable upon one-half of the community income, whether or not withdrawn from the estate during the period of administration.

(e) The Commissioner errs with respect to a segregation of each item of income and expense reflected in the estate tax return as filed in holding that one-half of such income and expense should be reflected in an individual return for the surviving spouse.

On page 4 of the deficiency statement the Commissioner errs in holding that the following items are taxable to the petitioner as income:

Interest .....	\$ 2,374.68
Rentals (amount of \$9,782.29 included in \$11,557.11.....)	9,782.29
Profit on sale of assets.....	95,904.77
Dividends .....	33,453.64
Expense .....	322.56

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[\*Page numbering appearing at top of page of original Reporter's Transcript.]

The Commissioner further errs in reducing interest disallowed by \$425.64 which amount is one-half of interest expense of the estate.

The Commissioner further errs in allowing deduction of \$5.96 representing one-half of tax expense claimed in return for the estate.

The Commissioner further errs in allowing 1570.00 dividends erroneously accrued to June 7, 1934 to be taxable to the petitioner.

(f) The Commissioner errs in holding that no loss can be recognized where a portion of the partnership assets is distributed in kind in connection with its liquidation.

(g) The Commissioner errs in holding that the court considered the sale of 85,000 shares of Sunshine Mining Company stock as the sale of community property.

(h) The Commissioner errs in holding that the petitioner approved the sale of any of her community interest in the total of 210,974 shares of this stock owned by the community or that the petitioner's agent approved the [2] sale of any of the surviving widow's community interest in this stock.

7. With respect to the year 1933 the facts upon which the petitioner relies as the basis for this proceeding are as follows:

That between February 1, 1928 and December 31, 1930 A. E. Larson loaned to the Daisy Mining Company, an Idaho corporation, the sum of \$14,722.84

this total amount being loaned from the community funds of the community composed of A. E. Larson, husband, and Rose B. Larson, wife. That seven demand notes were issued to A. E. Larson by the Daisy Mining and Milling Company, the total amount of all the notes being in the sum of \$14,722.84.

That in the 1933 income tax return filed by the petitioner one-half of said loans of \$14,722.84 or the amount of \$7,361.42 was reflected as a deduction for bad debts.

That these notes were charged off as bad and uncollectible and that their worthlessness was determined at that time.

Uncollectible notes and accounts against an insolvent debtor are proper deductions for income tax purposes.

8. With respect to the year 1934 the facts upon which the petitioner relies as the basis for this proceeding are as follows:

#### Error 6-d

Under the laws of the State of Washington the entire community estate, during the process of administration is under probate and the only right the petitioner had to receive anything was pursuant to an order from the court.

Under the laws of the State of Washington the vested right of the surviving spouse to receive one-half of the income from the community properties terminates with the death of the deceased spouse

and such right does not accrue again until distribution of the corpus of the estate is made.

#### Error 6-e

The laws of the State of Washington eliminates the vested right of surviving spouse to receive one-half of the income from community properties, this right terminating with the death of the deceased spouse. [3]

Interest of \$2,374.68 added by the Commissioner to income represents one-half of the interest income reflected in estate tax return filed.

Rentals of \$9,782.29 added by the Commissioner to income represents that portion of the adjusted rental income applicable to the estate erroneously added to income of the petitioner.

Profit on sale of assets totalling \$95,904.77 includes the amount of \$95,543.75 erroneously computed on one-half of 85,000 shares of Sunshine Mining Company stock sold. This 85,000 shares represented an interest of the deceased spouse and did not include any interest of the surviving widow. As sale price was equivalent to appraised value no profit resulted.

Profit of \$250.00 on bank stock and profit of \$111.02 included in total profit of \$95,904.77 are taxable to the estate and not to the surviving spouse.

Dividends totalling \$33,453.64 represent one-half of the adjusted dividend income to the estate and are taxable to the estate and not to the surviving widow.

Interest paid which was disallowed amounted to \$1,901.96 and this amount should be returned to income instead of \$1,476.32. The amount of \$1,901.96 was reduced by \$425.64 which latter amount represented one-half of estate's interest expense.

Taxes of \$5.96 allowed as deduction by Commissioner represents one-half of tax expense claimed by the estate and this item of \$5.96 is erroneously allowed by the Commissioner.

Item of expense for \$322.56 returned erroneously to income by the Commissioner represents one-half of legal expense claimed by the petitioner to June 7, 1934.

Item of \$1,570.00 was erroneously accrued and reflected in net income reported of \$32,132.38. The Commissioner errs in not reducing dividend income by this item of \$1,570.00.

#### Error 6-f

A. E. Larson was a partner in the partnership of Burrows Motor Company of Yakima, Washington. The partners were A. E. Larson and Grover Burrows. The interest of A. E. Larson was the interest of the community composed of A. E. Larson, husband, and Rose B. Larson, wife. [4]

After the death of Mr. Larson June 7, 1934 neither the estate nor Rose B. Larson, the widow, desired to continue interest in the partnership. The community interest was equal to 87.79% of the partnership net worth.



A court order was signed giving the surviving partner the preferential right to purchase the estate's interest in the partnership, this court order being No. 8561 and dated July 31, 1934.

In the sale to Grover Burrows the book values of assets and liabilities were considered to be as follows:

Assets .....	\$320,998.02
Liabilities .....	90,667.52
	<hr/>
	\$230,330.50

The above amount of \$320,998.02 represents the book values of assets and not the values at which the various items were appraised in the estate's inventory.

The value of the community estate's interest in the partnership was 87.79% of \$230,330.50 or \$202,207.15.

Included in the total partnership assets amounting to \$320,998.02 were the following:

Garage building with book value	
of .....	\$68,593.27
Sundry stock with book values of	4,728.88
	<hr/>
	\$73,322.15

In the sale to Grover Burrows these assets were retained by the estate. In deducting this amount of \$73,322.15 from the equity in partnership of \$202,207.15 there remained a balance of \$128,885.00 rep-

resenting the remaining portion of estate's equity in the partnership on the basis of book values and not the appraised values used in the estate's inventory.

For the remaining balance of \$128,885.00 in the partnership equity the estate received \$16,041.46 in cash and other items and notes totalling \$75,000.00 making a total amount of \$91,041.46, the difference between the remaining balance of equity and the amount received being \$37,843.54.

In the sale to Grover Burrows of the various assets purchased by him, the assets were priced on basis of appraised values. Included in said assets were certain items of real estate, the book values of which were \$11,625.87 and the appraised values of which were \$8,210.00. As the estate had retained the garage building, the petitioner considers the real estate items taken over by Grover Burrows as a distribution in kind and the loss of \$3,415.87, [5] being difference between \$11,625.87 and \$8,210.00, was deducted from loss of \$37,843.54 reflected in the transaction. This resulted in loss of \$34,427.67, apportioned as follows:

Loss reflected in notes, contracts and accounts receivable, mer- chandise inventories, etc.....	\$33,502.87
Loss reflected in sale of capital assets .....	924.80
	<hr/>
	\$34,427.67

In the sale to Mr. Burrows values placed upon the assets were the values at which said assets were priced in the estate's inventory so that no loss resulted as applicable to the one-half community interest of the deceased spouse.

As book values represent the cost of the surviving spouse's interest the loss claimed would amount to one-half of total loss in the transaction.

#### Error 6-g

The court did not consider that the sale of 85,000 shares of Sunshine Mining Company stock included any of the one-half community interest of the surviving spouse.

The court would not approve a sale encroaching upon the vested interest of the surviving spouse in one-half of the community property for the purpose of paying bequests named in the will of the deceased as the laws of the State of Washington provide against such a procedure.

#### Error 6-h

The petitioner did not approve the sale of any of her community interest in the total stock held by the community.

Shirley D. Parker, business agent for the petitioner, did not approve of the sale of any of the community interest of the petitioner in total stock held by the community. [6]

Wherefore, the petitioner prays that this Board may hear the proceedings and grant relief to the



extent of reduction of \$1514.29 in deficiency for the year 1933 and to the extent of a reduction of \$68,485.58 in deficiency for the year 1934.

ROSE B. LARSON,

Petitioner.

Yakima, Washington.

ISHAM N. SMITH,

Counsel for petitioner.

Yakima, Washington.

State of Washington,  
County of Yakima—ss.

Rose B. Larson, being duly sworn, states that she is the widow of A. B. Larson, deceased, that she is competent to verify the foregoing petition, that she has had the same read to her and is familiar with the statements contained therein, and that the facts stated are true except as to those facts stated to be upon information and belief, and those facts she believes to be true.

ROSE B. LARSON

Subscribed and sworn to before me this 21st day of April, 1937.

I. J. BOUNDS,

Notary Public in and for Yakima County, State of  
Washington, residing at Yakima, Washington.  
(Seal) [7]

Treasury Department  
Washington

Office of  
Commissioner of  
Internal Revenue

Address Reply to  
Commissioner of  
Internal Revenue  
and Refer to

January 27, 1937

Mrs. Rose B. Larson,  
c/o Shirley Parker,  
Larson Building,  
Yakima, Washington

Madam:

You are advised that the determination of your income tax liability for the taxable years 1933 and 1934 discloses a deficiency of \$71,287.47 as shown in the statement attached.

In accordance with section 272 (a) of the Revenue Act of 1932, as amended by section 501 of the Revenue Act of 1934, and section 272(a) of the Revenue Act of 1934, notice is hereby given of the deficiency mentioned. Within ninety days (not counting Sunday or a legal holiday in the District of Columbia as the ninetieth day) from the date of the mailing of this letter, you may file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:C:P-7. The signing and filing of this form will expedite the closing of your return(s) by permitting an early assessment of the deficiency and will prevent the accumulation of interest, since the interest period terminates thirty days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING,

Commissioner.

By W. T. SHERWOOD,

(Signed)

Acting Deputy Commissioner.

Enclosures:

Statement

Form 870

1093M [8]

## STATEMENT

IT:E:2

JBS-90D

In re: Mrs. Rose B. Larson,  
c/o Shirley Parker,  
Larson Building,  
Yakima, Washington.

## Income Tax Liability

Year	Income Tax Liability	Income Tax Assessed	Deficiency
1933 .....	\$ 3,353.23	\$1,309.25	\$ 2,043.98
1934 .....	72,438.85	3,195.36	69,243.49
Totals .....	\$75,792.08	\$4,504.61	\$71,287.47

The deficiency shown herein is based upon the report dated September 26, 1935, prepared by Revenue Agent W. G. Boyd, a copy of which was transmitted to you.

Careful consideration has been accorded your protest dated December 2, 1935, in connection with the findings of the examining officer and the information submitted at a conference held in the office of the internal revenue agent in charge. Also the information contained in the letter dated November 10, 1936, of your agent Mr. I. H. Church, submitted to the revenue agent.

Inasmuch as no further evidence was submitted that may be regarded as a basis for changing the original findings of the revenue agent and since it is indicated in Mr. Church's letter of November

13, 1936, you desire to stand on the facts previously presented to the agent, it is necessary for this office to issue the final notice of deficiency.

A synopsis of your return as adjusted follows:

## 1933

Net income reported on return.....		\$57,820.77
Joint net income reported.....		\$57,820.77
Plus:		
(a) Increase in partnership income.....\$	561.66	
(b) Increase in rentals.....	5,158.14	
(c) Disallowance of bad debts.....	15,272.84	
(d) Dividends .....	1,973.58	
	<hr/>	
	\$22,966.22	
Less:		
(e) Excise tax on dividends.....	1,973.58	20,992.64
	<hr/>	<hr/>
Adjusted joint income.....		\$78,813.41
		[9]
Husband's community income.....		\$39,406.70
Wife's community income.....		\$39,406.71
Less:		
Dividends as adjusted.....	\$29,980.60	
Personal exemption and credit		
for dependents .....	1,250.00	31,230.60
	<hr/>	<hr/>
Balance subject to normal tax.....		\$ 8,176.11
Normal tax at 4% on \$4,000.00.....		\$ 160.00
Normal tax at 8% on \$4,176.11.....		334.09
Surtax on \$39,406.71.....		2,859.14
		<hr/>
Total tax assessable.....		\$ 3,353.23
Tax previously assessed, account #212368.....		1,309.25
		<hr/>
Deficiency .....		\$ 2,043.98

## Explanation of Changes

(a) Due to an adjustment in depreciation of the partnership of Burrows Motor Company, on depreciable assets, the income of the partnership was increased by \$842.50. The amount applicable to your joint income is, therefore,  $\frac{2}{3}$  of \$842.50, or \$561.66.

(b) The increase in rental property is due to adjustments in depreciation as shown below:

Kind of Asset	Date of Acquisition	Cost	Depreciation Reserve Dec. 31, 1932	Residual Value Dec. 31, 1932	Life Remaining	Depreciation 1933
Garage building (brick) .....	1921	\$ 6,000.00	\$ 2,880.00	\$ 3,120.00	25 yrs.	\$ 124.80
Donnelly Hotel building (brick) .....	1928	125,000.00	17,187.50	107,812.50	28 <sup>3</sup> / <sub>4</sub> yrs.	3,750.00
Grandview building (brick) .....	1928	8,741.40	1,476.27	7,265.13	25 yrs.	290.60
Wapato House (frame) .....	1931					
	1933	1,800.00	—	1,800.00	33 <sup>1</sup> / <sub>3</sub> yrs.	40.50
Larson building furniture .....	1930	6,575.33	900.93	5,674.40	13 yrs.	436.49
						[10]
Larson building temporary layout .....	1930	31,145.84	2,800.84	28,345.00	23 years	1,232.39
Larson building elevators .....	1930	58,677.00	4,156.25	54,520.75	23 years	2,370.47
Larson building plumbing & heating .....	1930	85,765.91	6,075.04	79,690.87	23 years	3,464.82
Larson building proper .....	1930	413,391.18	12,573.97	400,817.21	58 years	6,910.64
Temporary layouts .....	1933	144.00	—	144.00	25 years	2.88
Furniture and fixtures .....	1933	1,471.61	—	1,471.61	15 years	49.05
Dorothy Henry .....	1933	581.68	—	581.68	15 years	38.77
Totals .....		\$739,293.95	\$48,050.80	\$691,243.15		\$18,711.41
Amount claimed .....						23,869.55
Disallowance .....						\$ 5,158.14



(c) Bad debts amounting to \$15,272.84, representing loss on the following notes, have been disallowed:

Kappleman Brothers.....		\$ 50.00
E. G. Morgan.....		500.00
Daisy Mining and Milling Company	February 1, 1928.....	1,600.00
Daisy Mining and Milling Company	March 1, 1928.....	1,000.00
Daisy Mining and Milling Company	April 1, 1928.....	800.00
Daisy Mining and Milling Company	May 1, 1928.....	1,600.00
Daisy Mining and Milling Company	July 23, 1929.....	1,522.84
Daisy Mining and Milling Company	December 31, 1929.....	3,600.00
Daisy Mining and Milling Company	December 31, 1930.....	4,600.00
Total.....		<u>\$15,272.84</u>

It is noted that the notes of Kappleman Brothers and E. G. Morgan cannot be located. In both cases it is known that both of these companies failed several years prior to 1933. [11]

It is held by this office that the investments in the Daisy Mining and Milling Company have not been ascertained to be worthless and are, therefore, not allowable deductions, whether claimed as notes, loan certificates or corporate stock.

(d) and (e). You failed to report the full amount of dividends received. You are advised \$1,973.58 paid for excise taxes has been included in dividends and a like amount has been allowed as a deduction in taxes paid.



1934

Net income reported.....			\$32,132.38
Plus:			
(a) Interest .....	\$	2,374.68	
(b) Partnership profit .....		928.37	
(c) Rentals .....		11,557.11	
(d) Profit on sale of assets.....		95,904.77	
(e) Dividends .....		33,453.64	
(f) Interest paid .....		1,476.32	
(g) Expense .....		322.56	
			<hr/>
		\$146,017.45	
Less:			
(h) Salary .....	\$224.19		
(i) Taxes .....	5.96		
(j) Bad Debts .....	390.31	620.46	145,396.99
		<hr/>	<hr/>
Net income .....			\$177,529.37
Less:			
Personal exemption .....			1,104.16
			<hr/>
Income subject to surtax.....			\$176,425.21
Less:			
Dividends .....	\$65,288.07		
Earned income credit.....	300.00		65,588.07
		<hr/>	<hr/>
Balance subject to normal tax.....			\$110,837.14
			[12]
Normal tax at 4% on \$110,837.14.....		\$	4,433.49
Surtax on \$176,425.21.....			68,005.36
			<hr/>
Total tax assessable.....			\$72,438.85
Tax previously assessed, #June 200037.....			3,195.36
			<hr/>
Deficiency .....			\$69,243.49

## Explanation of Changes

It is held by this office that the surviving spouse of a community estate is taxable upon her one-half

of the community income, whether or not withdrawn from the estate during the period of administration.

(a) The amount of \$2,374.68 represents your one-half interest received through the community property Estate of Albert E. Larson from June 7, to December 31, 1934, which was reported on the return filed for the estate.

(b) The corrected partnership profit of \$3,332.36 is your community one-half of the adjusted partnership income to June 7, 1934. The partnership was not continued after June 7, 1934. No loss can be recognized where a portion of the partnership assets is distributed in kind in connection with its liquidation.

(c) Increase on rentals are due to the following adjustment:

Joint income from January 1 to June 7, 1934 reported.....	Loss	\$2,757.29
Plus:		
Insurance paid as verified by records.....	\$1,404.32	
Excessive depreciation as shown in (c) .....	2,145.30	3,549.62
Profit .....		\$ 792.33
Profit your community one-half.....		\$ 396.17
Loss reported .....		1,378.65
Increase .....		\$ 1,774.82
Income from rented properties from June 7, 1934 to December 31, 1934 (not reported) as shown in attached schedule A.....		9,782.29
Total adjustment .....		\$11,557.11

(d) The amount of \$95,904.77 as shown in schedule B attached, represents profit on sale of interest in community property during course of Probate of Estate of A. E. Larson. It is noted that you contend that the stock sold was from the one-half community interest belonging to Mr. Larson and that none of the stock pertaining to Mrs. Larson's one-half interest was sold.

An examination of the court files in connection with the administration of this estate does not indicate any attempt to distinguish the stock sold. Likewise upon sale or other disposition of any other property involved in the estate, no attempt is made to segregate your community interest from that of the estate.

Under the terms of the will you are the residuary legatee. The estate was solvent, and the indications were that the payment of bequest would not consume in excess of 50 percent of Mr. Larson's one-half of the community. You had an undivided one-half interest in all property included in the estate and as residuary legatee, a 100 percent interest in the estate after payment of specific bequests.

It is further noted that you contend that the stock sold was singled out and sold from the estate's one-half especially for the payment of bequests.

You are advised the records do not indicate this to be the case. In fact, the records indicate that the court considered this to be a sale of community property, and your approval through your agent was obtained before the sale was authorized.

(e) It is held that the dividends received on your one-half of corporate stock during process of probate should be reported on your return as shown below.

One-half dividends as shown on return of	
A. E. Larson, deceased.....	\$31,834.43
One-half dividends reported on return of	
Estate of A. E. Larson.....	31,653.64
One-half of \$3,600.00 dividends omitted	
from estate return.....	1,800.00
	<hr/>
Total .....	\$65,288.07
Amount reported .....	31,834.43
	<hr/>
Increase .....	\$33,453.64
	[14]

(f) Interest of \$1,901.96 paid after June 7, 1934, was paid on loan made by Shirley Parker for purpose of investment in a syndicate known as Sunshine Consolidated. Since this loan appears to be his loan, the deduction for interest cannot be allowed on your return.

You are entitled, however, to one-half of the community interest expense shown on the Estate of A. E. Larson, or \$425.64. The adjustment of these items makes a net disallowance of \$1,476.32.

(g) Community half of \$322.56 representing fee paid to Mr. Parker for perfecting title to property appears to be a capital item.

(h) The corrected salaries as shown are the community one-half salaries received up to the death of Mr. Larson as shown below:

Fees received from Surety Finance Company.....	\$ 25.00
Salaries received from Sunshine Mining Co.....	1,046.67
Guaranty Trust Co. fees.....	20.00
<hr/>	
Total .....	\$1,091.67
Your community share.....	\$ 545.83
Amount reported on return.....	770.02
<hr/>	
Overstatement .....	\$ 224.19

(i) You are entitled to a deduction to one-half of miscellaneous taxes paid by community property Estate of A. E. Larson.

(j) You have been allowed your community one-half of \$780.63 representing the Boland, Bond and unpaid balance of Bittner (Sr.) accounts which were actually written off the books in the year 1934.

A copy of this letter, together with a copy of the statement and schedules has been mailed to your representative, Isham N. Smith, 1014, Larson Building, Yakima, Washington, in accordance with the authority contained in the power of attorney executed by you and on file with the Bureau. [15]

## EXHIBIT A

INCOME FROM RENTED PROPERTY FROM JUNE 7, 1934  
TO DECEMBER 31, 1934 AS ADJUSTED

	Reported	Receipts Issued
Donnelly Hotel .....	\$10,826.66	\$10,826.66
Grandueir Motor Building.....	270.66	270.66
Wapato Building .....	53.58	53.58
Burrows Motor Building.....	2,450.00	2,450.00
Larson Building .....	29,617.80	29,617.80
Total .....	\$43,218.70	\$43,218.70
Less expenses:		
Repairs .....	\$ 45.16	\$ 45.16
Insurance .....	1,611.88	646.67
Taxes .....	5.20	5.20
Labor .....	4,876.82	4,876.82
Light, heat, etc.....	5,561.26	5,561.26
Interest .....	389.71	389.71
Total expenses .....	\$12,490.03	\$11,524.82
Depreciation on your half.....	7,664.98	6,064.65
Depreciation on estate's half.....	3,515.02	3,656.83
Total deductions .....	\$23,670.03	\$21,246.30
Total receipts .....	\$43,218.70	\$43,218.70
Total deductions .....	23,670.03	21,246.30
Net income .....	\$19,548.67	\$21,972.40
One-half receipts .....	\$21,609.35	\$21,609.35
One-half expenses .....	6,245.02	5,762.41
Sub-total .....	\$15,364.33	\$15,846.94
Depreciation of Mrs. Larson.....	7,664.98	6,064.65
Income, Mrs. Larson.....	\$ 7,699.35	\$ 9,782.29

	Profit	Percent Taxable	Amounts
0	\$ 13,750.00	40 percent	\$ 5,500.00
0	27,625.00	40 percent	11,050.00
0	14,312.50	30 percent	4,293.75
0	97,500.00	40 percent	39,000.00
0	17,000.00	30 percent	5,100.00
0	34,000.00	30 percent	10,200.00
0	34,000.00	30 percent	10,200.00
0	17,000.00	30 percent	5,100.00
0	17,000.00	30 percent	5,100.00
<hr/>			<hr/>
0	\$272,187.50		\$95,543.75
0	\$ 625.00	40 percent	\$ 250.00
0	—	—	—
0	—	—	—
0	—	—	—
0	—	—	—
0	—	—	—
8	—	—	—
0	138.77	80 percent	111.02
<hr/>			<hr/>
8	\$272,951.27		\$95,904.77



## EXHIBIT A

INCOME FROM RENTED PROPERTY FROM JUNE 7, 1934  
TO DECEMBER 31, 1934 AS ADJUSTED

	Reported	Receipts Issued
Donnelly Hotel .....	\$10,826.66	\$10,826.66
Grandneir Motor Building.....	270.66	270.66
Wapato Building .....	53.58	53.58
Burrows Motor Building.....	2,450.00	2,450.00
Larson Building .....	29,617.80	29,617.80
Total .....	\$43,218.70	\$43,218.70
Less expenses:		
Repairs .....	\$ 45.16	\$ 45.16
Insurance .....	1,611.88	646.67
Taxes .....	5.20	5.20
Labor .....	4,876.82	4,876.82
Light, heat, etc.....	5,561.26	5,561.26
Interest .....	389.71	389.71
Total expenses .....	\$12,490.03	\$11,524.82
Depreciation on your half.....	7,664.98	6,064.65
Depreciation on estate's half.....	3,515.02	3,656.83
Total deductions .....	\$23,670.03	\$21,246.30
Total receipts .....	\$43,218.70	\$43,218.70
Total deductions .....	23,670.03	21,246.30
Net income .....	\$19,548.67	\$21,972.40
One-half receipts .....	\$21,609.35	\$21,609.35
One-half expenses .....	6,245.02	5,762.41
Sub-total .....	\$15,364.33	\$15,846.94
Depreciation of Mrs. Larson.....	7,664.98	6,064.65
Income, Mrs. Larson.....	\$ 7,699.35	\$ 9,782.29

[16]



IT:E:2

JBL

Mrs. Rose B. Larson.

## SCHEDULE B

Kind of Stock	Number Shares	Certificate Number	Date Acquired	Time held	Cost of Undivided Half	Selling Price Undivided Half	Profit	Percent Taxable	Amount
Sunshine Mining Co.	5,000	2822	Feb. 9, 1929	5 - 10 years	(1) \$ 3,500.00	\$ 17,250.00	\$ 13,750.00	40 percent	\$ 5,500.00
Sunshine Mining Co.	10,000	1147	Nov. 30, 1925	5 - 10 years	(2) 1,500.00	29,125.00	27,625.00	40 percent	11,050.00
Sunshine Mining Co.	5,000	738	Prior 1924	Over 10 years	250.00	14,562.50	14,312.50	30 percent	4,293.75
Sunshine Mining Co.	30,000	1346	Nov. 1, 1926	5 - 10 years	(2) 6,000.00	103,500.00	97,500.00	40 percent	39,000.00
Sunshine Mining Co.	5,000	739	Prior 1924	Over 10 years	250.00	17,250.00	17,000.00	30 percent	5,100.00
Sunshine Mining Co.	10,000	601	Prior 1924	Over 10 years	500.00	34,500.00	34,000.00	30 percent	10,200.00
Sunshine Mining Co.	10,000	633	Prior 1924	Over 10 years	500.00	34,500.00	34,000.00	30 percent	10,200.00
Sunshine Mining Co.	5,000	654	Prior 1924	Over 10 years	250.00	17,250.00	17,000.00	30 percent	5,100.00
Sunshine Mining Co.	5,000	736	Prior 1924	Over 10 years	250.00	17,250.00	17,000.00	30 percent	5,100.00
	85,000				\$13,000.00	\$285,187.50	\$272,187.50		\$95,543.75
West Side National Bank			Dec. 26, 1926	5 - 10 years	\$ 3,000.00	\$ 3,625.00	\$ 625.00	40 percent	\$ 250.00
L. I. D. #422					2,250.00	2,250.00	—	—	—
District 18					500.00	500.00	—	—	—
L. I. D. #374					250.00	250.00	—	—	—
L. I. D. #386					50.00	50.00	—	—	—
L. I. D. #395					2,500.00	2,500.00	—	—	—
Lovell Mortgage					1,868.78	1,868.78	—	—	—
Wapato House and Lot			1933	1 - 2 years	961.23	1,100.00	138.77	80 percent	111.02
Gain					\$24,380.01	\$297,331.28	\$272,951.27		\$95,904.77

(1) This value based on notation certificate #2996 which was acquired May 9, 1929 at cost of \$1,472.00 a share.

(2) Cost not over amount shown.



Depreciation			One-half Depreciation June 7, 1934 to Dec. 31, 1934	Cost	Community One-half Depr'n Reserve Dec. 31, 1934
To June 7, 1934 43.61%	June 7, 1934 to Dec. 31, 1934				
.80	\$ 54.44	\$ 70.36	\$ 35.18	\$ 3,000.00	\$ 1,564.80
.00	1,635.38	2,114.62	1,057.31	62,500.00	12,343.75
.60	126.74	163.86	81.93	4,370.70	1,028.73
.05	23.55	13.50*	6.75	900.00	38.77
.49	190.35	246.14	123.07	3,287.66	886.96
.39	537.46	694.93	347.47	15,572.92	2,632.81
.47	1,033.76	1,336.71	668.35	29,338.50	4,448.59
.80	1,511.01	1,953.81	976.90	42,882.96	6,502.34
.64	3,013.73	3,896.91	1,948.46	206,695.59	13,197.62
.76	2.52	3.24	1.62	72.00	4.32
.49	.19	Approx. 4.30	2.15	95.51	2.25
.17	40.64	53.53	26.76	735.80	71.61
.17	.67	1.50	.75	20.05	1.09
.16	25.35	32.81	16.41	290.84	48.47
.01	*\$8,195.79	\$10,586.22	\$5,293.11	\$369,762.53	\$42,772.11
.86			771.34	37,616.27	771.34
.87			*\$6,064.45	\$407,378.80	\$43,543.45



IT:E:2

JBL

Mrs. Rose B. Larson.

SCHEDULE C  
Depreciation and Depreciable Assets

Kind of Assets	Date Acquired	Cost	Depreciation Reserve Dec. 31, 1933	Residual Value Dec. 31, 1933	Life Original Remaining	Depreciation			One-half Depreciation June 7, 1934 to Dec. 31, 1934	Cost	Community One-half Depreciation Reserve Dec. 31, 1934
						Entire Year	To June 7, 1934 43.61%	June 7, 1934 to Dec. 31, 1934			
Grandview Garage (Brick)	1921	6,000.00	\$ 3,004.80	\$ 2,995.20	24 years	\$ 124.80	\$ 54.44	\$ 70.36	\$ 35.18	\$ 3,000.00	\$ 1,564.80
Donnelly Hotel Building (Brick)	1928	125,000.00	20,937.50	104,062.50	27 $\frac{3}{4}$ years	3,750.00	1,635.38	2,114.62	1,057.31	62,500.00	12,343.75
Grandview Building (Brick)	1928	8,741.40	1,766.87	6,974.53	24 years	290.60	126.74	163.86	81.93	4,370.70	1,028.73
Wapato Dwelling	Mar. 1, 1933	1,800.00	40.50	1,759.50	Approx. 32 $\frac{1}{3}$ years	37.05	23.55	13.50*	6.75	900.00	38.77
Larson Building Furniture	1930	6,575.33	1,337.42	5,237.91	12 years	436.49	190.35	246.14	123.07	3,237.66	886.96
Larson Building Temporary Layout	1930	31,145.84	4,033.23	27,112.61	22 years	1,232.39	537.46	694.93	347.47	15,572.92	2,632.81
Larson Building Elevator	1930	58,677.00	6,526.72	52,150.28	22 years	2,370.47	1,033.76	1,336.71	668.35	29,338.50	4,448.59
Larson Building Plumbing and Heating	1930	85,765.91	9,539.86	76,226.05	22 years	3,464.80	1,511.01	1,953.81	976.90	42,882.96	6,502.34
Larson Building Proper	1930	413,391.18	19,484.61	393,906.57	57 years	6,910.64	3,013.73	3,896.91	1,948.46	206,695.59	13,197.62
Larson Building Temporary Layouts	June 30, 1933	144.00	2.88	141.12	25 years	5.76	2.52	3.24	1.62	72.00	4.32
Larson Building Temporary Layouts	Mar. 7, 1934	191.02		191.02	25 years	Approx. 4.49	.19	Approx. 4.30	2.15	95.51	2.25
Larson Building Furniture and Fixtures	June 30, 1933	1,471.61	49.05	1,422.56	15 years	Approx. 94.17	40.64	53.53	26.76	735.80	71.61
Larson Building Furniture and Fixtures	Mar. 7, 1934	40.10		40.10	15 years	Approx. 2.17	.67	1.50	.75	20.05	1.09
Larson Building Dorothy Henry Fixtures	June 30, 1933	581.68	38.77	542.91	10 years	58.16	25.35	32.81	16.41	290.84	48.47
		\$739,525.07	\$66,762.21	\$672,762.86		\$18,782.01	*\$8,195.79	\$10,586.22	\$5,293.11	\$369,762.53	\$42,772.11
Burrows Motor Building One-half interest	June 7, 1934	37,616.27			27 $\frac{1}{2}$ years	1,367.86			771.34	37,616.27	771.34
		\$777,141.34				\$20,149.87			*\$6,064.45	\$407,378.80	\$43,543.45

Mrs. Larson is allowed one-half depreciation to date of Mr. Larson's death. She is allowed depreciation on one-half the assets from that date to December 31, 1934.

Depreciation claimed January 1, 1934 to June 7, 1934 \$10,341.09  
Depreciation allowed \* 8,195.79

Difference as shown under (e). \$ 2,145.30  
Depreciation allowed June 7, 1934 to December 31, 1934 as shown  
in Schedule A \$ 6,064.45

[Endorsed]: Filed April 23, 1937. [18]



[Title of Board and Cause.]

### ANSWER

The Commissioner of Internal Revenue, by his attorney, Morrison Shafroth, Chief Counsel, Bureau of Internal Revenue, for answer to the petition in the above-entitled proceeding, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the petition.

2. Admits the allegations contained in paragraph 2 of the petition.

3. Admits that the taxes in controversy are income taxes for the calendar years 1933 and 1934 and amount to \$2,043.98 and \$69,243.49, respectively. Denies that the amounts in controversy are \$1,514.29 for 1933 and \$69,485.58 for 1934, as alleged in paragraph 3 of the petition.

4. Denies the allegations contained in paragraph 4 of the petition.

5. Denies the assignments of error contained in subparagraphs (a), (b) and (c) of paragraph 5 of the petition.

6. Denies the assignments of error contained in subparagraphs (d) to (h), incl., of paragraph 6 of the petition. [19]

7. Denies the allegations of fact set forth in paragraph 7 of the petition.

8. For lack of information as to the actual facts, respondent denies the allegations contained in sub-



paragraphs headed "Error 6-d; 6-e; 6-f; 6-g and 6-h" of paragraph 8 of the petition.

9. Denies that petitioner is entitled to any of the relief prayed for in the petition.

10. Denies generally and specifically each and every allegation contained in the petition not hereinabove admitted, qualified or denied.

Wherefore, it is prayed that the appeal of the petitioner be denied.

MORRISON SHAFROTH,

Chief Counsel,

Bureau of Internal Revenue.

Of Counsel:

JOHN F. GREANEY,

JOHN D. KILEY,

Special Attorneys,

Bureau of Internal Revenue.

JWS/hec 5/15/37 [20]

[Endorsed]: Filed May 17, 1937.

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[Title of Board and Cause.]

### AMENDED PETITION

The above-named petitioner hereby petitions for a redetermination of a deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency dated January 27, 1937, bearing symbols IT:E:2—JES—90D, and as a basis for this proceeding alleges as follows:

1. Petitioner is an individual residing in the City of Yakima, Yakima County, Washington, and is the widow of A. E. Larson, deceased, June 7, 1934. The notice of deficiency from which this appeal is taken (copy of which is attached to the original petition herein and marked Exhibit "A") was mailed to the petitioner on or subsequent to January 27, 1937.

2. The taxes in controversy are income taxes for the calendar years 1933 and 1934. The amount of the deficiency determined by the respondent for the year 1933 is \$2,043.98, [21] substantially all of which is in dispute, and for the year 1934 is \$69,-243.49, all of which is in dispute herein.

3. In the determination of the proposed deficiency for 1933 respondent has erred in the following respects:

A. Disallowance of community one-half of indebtedness due to the taxpayer from Daisy Mining & Milling Company, amounting to the sum of \$14,722.84, E. G. Morgan \$500.00, and Kappleman Brothers \$50.00.

B. Increase in rentals of \$5,158.14.

4. In support of the assignments of error stated in the preceding paragraph, petitioner alleges:

A. That the community composed of the taxpayer and her husband had, over a period of years prior to the taxable year, made loans to Daisy Mining & Milling Company, a corporation, amounting to and represented by promis-

sory notes of said debtor aggregating the sum of \$14,722.84, to E. G. Morgan amounting to \$500.00 and to Kappleman Brothers amounting to \$50.00, all of which amounts were due and owing to the taxpayer in the taxable year 1933 and which amounts were and during such taxable year were determined by the taxpayer to be uncollectible and worthless and were charged off by the taxpayer as shown upon her books of account for said year.

B. The increase in rentals made by respondent is due almost entirely to disallowance of depreciation [22] claimed in connection with the Larson Building, its equipment, furnishings and fixtures. This is a modern business and office building erected in 1930 in the City of Yakima, Washington. The taxpayer claimed depreciation on the building itself based upon a fifty-year life, upon elevators, plumbing and heating equipment based upon a twenty-year life, and upon furniture, fixtures and temporary layouts installed in 1933 based upon a ten-year life. Adjustments made by respondent are based upon a life for the building of sixty years, for elevators, plumbing and heating, temporary layouts of twenty-five years, and furniture and fixtures of fifteen years. Petitioner asserts that the practical useful economic life of each of the several classes of property does not and will not exceed the life claimed by

the taxpayer and used as a basis for depreciation deduction in taxpayer's return, and that the amounts so claimed were and are fair, reasonable, proper and allowable under the applicable law and regulations and should not be changed.

5. For the year 1934 petitioner alleges that respondent erred in the following respects:

A. In holding generally that the petitioner, as the surviving spouse of a marital community having community property income under the laws of the State of Washington, is taxable upon her one-half of such community income during the period of administration [23] whether or not withdrawn from the estate.

B. In adding to petitioner's income interest in the sum of \$2,374.68.

C. In adding to petitioner's income rental of \$11,557.11.

D. In adding to petitioner's income profit on sale of assets of \$95,904.77.

E. In adding to petitioner's income dividends in the sum of \$33,453.64.

F. In disallowing as a deduction and in adding to petitioner's income interest paid in the sum of \$1,901.96.

G. In not allowing to petitioner, in the event her community one-half of income received by the estate of A. E. Larson from com-

munity property during course of administration is includable in her income and taxable to her, an allowance of \$17,213.83 representing loss sustained by petitioner upon her community one-half interest in property sold by the estate to Grover Burrows of Yakima, Washington, in the taxable year.

H. In including in petitioner's taxable income dividends of \$1,570.00 from Surety Finance Company of Yakima on the basis that the same accrued prior to June 7, 1934. [24]

6. In support of the assignments of error set forth in the preceding paragraph, petitioner relies upon the following facts:

A. Upon the death of her husband, A. E. Larson, on June 7, 1934, his will was submitted to probate in the Superior Court of the State of Washington for Yakima County on June 13, 1934, and an executor appointed. All of the property owned by decedent or petitioner was community property and under the law of the State of Washington petitioner's one-half community interest was subject to control and administration by the executor and the probate court during all of the taxable year, and the said estate constituted a trust which was entitled to and did receive all of the community income and has reported the same as a separate legal and taxable entity. The respondent has accepted the return of the estate upon such basis

and the payment of tax thereon, and has proposed a deficiency against such estate as a separate taxpayer based upon the inclusion in the return of said estate of all of the income from community property and without credit for any amount paid or distributable to the petitioner. To now tax the petitioner upon the same income, which has already been taxed to the said estate, constitutes double taxation contrary to law and in violation of the Constitution of the United States and particularly Section 8 of Article I thereof and Amendment Fifth thereto. [25]

B. The item of interest of \$2,374.68 is income upon the entire community property being administered, and which was returned and taxed as set forth in Paragraph A above, and is, therefore, not properly includable in the income of this taxpayer for the taxable year.

C. The item of rental of \$11,557.11 represents income upon the entire community property being administered, and which was returned and taxed as set forth in Paragraph A above, and is, therefore, not properly includable in the income of this taxpayer for the taxable year. In addition, this item is subject to adjustment for depreciation with respect to the Larson Building for the reasons and upon the basis set forth in Paragraph 4 B above.

D. The item of profit on sale of assets relates, to the extent of \$95,543.75, to the sale of



85,000 shares of Sunshine Mining Company stock made by the executor of the estate of A. E. Larson during the taxable year for the purpose of paying legacies provided in decedent's will. The property sold was stock belonging to the decedent's community one-half interest and not to the petitioner, and the entire profit, if any, was the profit of the estate of A. E. Larson and not of petitioner. The respondent has, by deficiency letter directed [26] to the estate of said decedent, so treated said sale and the alleged profits thereof and has determined a deficiency against said estate upon such basis.

In addition and even if any part of such profit is taxable to petitioner, the basis of such stock to petitioner adopted by respondent is incorrect and the true basis of such stock was \$.536 per share.

E. The item of dividends amounting to \$33,453.64 represents dividends upon the entire community property of the decedent and the petitioner and, therefore, none of such item is properly includable in the income of this taxpayer for the taxable year.

In addition thereto it includes one-half of an item of \$3,600.00 dividends paid upon the capital stock of Surety Finance Company of Yakima, which was not received and did not constitute income for or during the period involved herein. Such amount was a dividend



paid pursuant to a resolution adopted on December 31, 1934, and ordered to be paid by checks to be mailed on that date. Such dividend and the check therefor was not received either by the petitioner or the estate until subsequent to January 1, 1935, and was not subject to control of the petitioner or the estate during the taxable period. [27]

F. The item of interest deduction disallowed in the sum of \$1,901.96 is interest paid on indebtedness of the taxpayer represented by a note to a bank, which was an obligation of the taxpayer incurred for a valuable and adequate consideration. Such interest was actually paid within the year and should be allowed.

G. The decedent, representing the community estate, was a member of a partnership known as Burrows Motor Company of Yakima, Washington. Upon the death of A. E. Larson the surviving partner, Grover Burrows, purchased such entire community interest in certain of the assets of said partnership at the valuation placed on said partnership and the assets thereof in the appraisal of decedent's estate, which was the same figure used as the value of such assets and interest for estate tax purposes. There was, therefore, no gain or loss upon the sale of the community one-half belonging to the deceased, but the basis of the community one-half belonging to decedent's widow, Rose B. Larson, exceeded the selling

price to the extent of at least \$17,213.83. If there is includable in petitioner's income for the taxable year any part of the income of the estate of A. E. Larson representing petitioner's one-half community interest therein, then the amount of such loss should properly be allowed as a deduction to the petitioner. [28]

H. The net income of \$32,132.38 reported by petitioner upon her original return included the sum of \$1,570.00 dividends on stock of Surety Finance Company of Yakima which were erroneously treated as accrued on June 7, 1934, the date of death of petitioner's husband, A. E. Larson, but which in fact were neither declared nor paid prior to that date. Such dividends were not received by petitioner but were received by the executor of the estate of A. E. Larson and should be eliminated from petitioner's taxable income.

Wherefore, petitioner prays that this Board hear and determine this proceeding and find that respondent has erred in respect to the matters above set forth and redetermine petitioner's liability accordingly.

H. B. JONES

GEORGE KINNEAR

Counsel for Petitioner

State of Washington,  
County of King—ss.

Rose B. Larson, being first duly sworn, upon oath deposes and says: That she is the petitioner above named; [29] that she has read the foregoing amended petition, is familiar with the statements therein contained and believes the same to be true and correct.

ROSE B. LARSON

Subscribed and sworn to before me this 7th day of August, 1940.

WINONA DAY

Notary Public in and for the State of Washington,  
residing at Seattle.

[Endorsed]: Filed Nov. 12, 1940. [30]

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[Title of Board and Cause.]

### ANSWER TO AMENDED PETITION

Comes now the Commissioner of Internal Revenue, by his attorney, J. P. Wenchel, Chief Counsel, Bureau of Internal Revenue, and for answer to the amended petition filed herein, admits and denies as follows:

1. Admits the allegations contained in paragraph 1 of the amended petition.

2. Admits that the taxes in controversy are income taxes for the calendar years 1933 and 1934, but denies that the amount in controversy is as alleged in paragraph 2 of the amended petition.

3. A and B. Denies the allegations contained in subparagraphs A and B of paragraph 3 of the amended petition.

4. A and B. For lack of information and knowledge sufficient to form a belief, denies the allegations contained in subparagraphs A and B of paragraph 4 of the amended petition. [31]

5. A to H. inclusive. Denies that the Commissioner erred as alleged in subparagraphs A to H, inclusive, of paragraph 5 of the amended petition.

6. A. Admits that upon the death of petitioner's husband, A. E. Larson, on June 7, 1934, his will was submitted to probate in the Superior Court of the State of Washington for Yakima County on June 13, 1934, and an executor appointed; admits that all of the property owned by decedent or petitioner was community property and under the law of the State of Washington petitioner's one-half community interest was subject to control and administration by the executor and the probate court during all of the taxable year, as alleged in subparagraph A of paragraph 6 of the amended petition; denies the remaining allegations contained in said sub-paragraph A of paragraph 6 of the amended petition.

B to E, inclusive. Denies the allegations contained in subparagraphs B to E, inclusive, of paragraph 6 of the amended petition.

F and G. For lack of information and knowledge sufficient to form a belief, denies the allegations contained in subparagraphs F and G of paragraph 6 of the amended petition.

H. Denies the allegations contained in subparagraph H of paragraph 6 of the amended petition.

[32]

7. Denies generally and specifically each and every material allegation contained in the amended petition, not hereinbefore specifically admitted, qualified or denied.

As an alternative defense to the allegation of error contained in paragraph 5 D of the amended petition the respondent alleges:

That in case the Board finds for the petitioner, based upon the error and facts alleged in paragraphs 5 D and 6 D of the amended petition, and holds that any number of shares of Sunshine Mining Company stock less than 42,500 was sold out of the community interest of the petitioner, Rose B. Larson, an addition to taxable income should be made, representing the dividends received by the petitioner on shares unsold. The resulting tax on such income is hereby claimed.

Wherefore, it is prayed that the petitioner's appeal be denied and that the Commissioner's determination of deficiency be approved.

J. P. WENCHEL,

Chif Counsel,

Bureau of Internal Revenue.

Of Counsel:

ALVA C. BAIRD,

Division Counsel.

B. H. NEBLETT,

Special Attorney,

Bureau of Internal Revenue.

[Endorsed]: Filed Nov. 12, 1940. [33]

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[Title of Board and Cause.]

### REPLY

Comes now the petitioner, Rose B. Larson, by her attorney, George Kinnear, and for reply to the affirmative allegations in the answer to amended petition filed by respondent herein declares as follows:

#### 7.

Petitioner denies generally and specifically each and every material allegation contained in the "alternative defense to the allegation of error contained in Paragraph D 5 of the amended petition"



as set forth in the last paragraph of respondent's reply on page 3 thereof.

(s) GEORGE KINNEAR

Of Counsel for Respondent

Copy served on respondent.

G. D. W.

[Endorsed]: Filed Nov. 12, 1940. [34]

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United States Board of Tax Appeals

Docket No. 88813

ROSE B. LARSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

Docket No. 88814

ESTATE OF A. E. LARSON, Deceased, Shirley D.  
Parker, Adminis. de bonis non with the Will  
annexed,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,  
Respondent.

### STIPULATION OF FACTS

It is mutually stipulated and agreed, by and between the parties hereto, by their respective counsel, that the following facts may be taken as true by the



Board with the reservation that this stipulation shall be without prejudice to the right of either party to introduce further evidence not inconsistent with the facts herein stipulated. [35]

1. The claims of the petitioners for the year 1933, based upon the errors and facts alleged in paragraphs 3(a) and 4(a) of the amended petition in Docket No. 88813, and paragraphs 4(a) and 5A of the amended petition in Docket No. 88814, relating to the disallowance of community bad debts due from the Daisy Mining and Milling Company in the amount of \$14,722.00 from E. J. Morgan amounting to \$500.00, and from Kaplan Brothers amounting to \$50.00, are hereby waived by petitioners. Petitioners concede that said debts did not become uncollectible and worthless during the taxable year 1933 and are not deductible by them in said year.

2. The claim of the petitioners for the years 1933 and 1934, based upon the errors and facts alleged in paragraphs 3(b) and 4B and 6C of Docket No. 88813, and paragraphs 4(b) and 5B of Docket No. 88814, relating to increase in community rentals (depreciation) is conceded by the respondent. Respondent concedes that petitioners are entitled to depreciation on the basis of the lives claimed in paragraphs 4B and 5B of the amended petitions filed in Docket Nos. 88813 and 88814, respectively, for 1933 and 1934.

3. The claim of the petitioner in Docket No. 88813 for the year 1934, based upon the error and facts alleged in paragraphs 5(g) and 6G of the

amended petition, regarding an allowance of \$17,213.83, relating to a disposition of a partnership interest in the Larson-Burrows partnership is hereby conceded by the respondent, provided that the Board holds that the petitioner, as the surviving spouse of a marital community, is [36] taxable upon her one-half of the community income earned during the period of administration, contrary to the contention of the petitioner as alleged in paragraph 5(a) of the amended petition in Docket No. 88813.

4. In case the Board holds for the petitioner in respect to the error alleged in said paragraph 5(a) of the amended petition in *Rose B. Larson*, Docket No. 88813, for the year 1934, then the amount of \$17,213.83, referred to in paragraph 3 of this stipulation, is a proper deduction from community income as alleged in paragraph 4E of the petition in the case presently pending before this Board entitled *Estate of A. E. Larson*, Docket No. 104214, provided the Board holds for the respondent and contrary to petitioner's allegation of error in paragraph 4F of the petition filed in said case, which case is not set for hearing on the Board Calendar at this time.

(Sgd.) H. B. JONES

Counsel for Petitioner

(Signed) J. P. WENCHEL

Chief Counsel,

Bureau of Internal Revenue,

Counsel for Respondent.

[Title of Board and Cause—Docket Nos. 88813, 88814.]

Promulgated July 24, 1941.

1. Petitioner is the surviving spouse of decedent, who died testate in the taxable year leaving a large estate consisting entirely of community property. Decedent and his wife were residents of the State of Washington. The estate was in administration throughout the taxable year. Held, that community property interest, rents, and dividends received by the executor of decedent's estate during administration are taxable to the estate in toto and no part thereof to the surviving spouse. *Barbour v. Commissioner*, 89 Fed. (2d) 474 followed.

2. During the taxable year the executor of the estate sold 85,000 shares of certain stock. Held, that the executor sold the shares from decedent's interest and that no part of the gain realized on the sale is taxable to petitioner.

3. Petitioner and her son signed notes as comakers, thereby obtaining loans totaling \$58,000. The loans were obtained entirely on the credit of petitioner and the proceeds were immediately turned over to petitioner's son. Petitioner subsequently made a gift of the proceeds of the loans to her son. Held, the interest paid on the loans in the taxable year by petitioner is deductible by her.

H. B. Jones, Esq., and George C. Kinnear, Esq., for the petitioners.

B. H. Neblett, Esq., and Clyde R. Maxwell, Esq., for the respondent.

Respondent determined a deficiency of \$2,043.98 in the income tax of each petitioner for the year 1933 and a deficiency in income tax of petitioner Rose B. Larson for the year 1934 in the sum of \$69,243.49. The primary issue is whether income on community property received by the executor of the estate of the deceased husband of petitioner Rose B. Larson during the period of administration is taxable entirely to the estate or is taxable one-half to the estate and one-half to her. The second, third, and fourth issues relate to the taxability of com- [38] munity interest, rents, and dividends, respectively, which were received by the executor of the estate of the deceased husband of petitioner Rose B. Larson during the period of administration. The fifth issue is whether or not petitioner Rose B. Larson is taxable on gain from the sale of certain stock by the executor of the estate of her deceased husband during the period of administration. The final issue involves an interest deduction.

By stipulation of the parties filed at the hearing issues relating to bad debt losses and depreciation for the year 1933 were eliminated, the former being waived by petitioners and the latter conceded by respondent. The deficiencies resulting from the stipulation of the parties will be determined in re-

computation under Rule 50. The issues remaining for the Board's determination relate only to the income tax liability of petitioner in Docket No. 88813 for the year 1934. The proceedings were consolidated for hearing.

### FINDINGS OF FACT.

Rose B. Larson, hereinafter referred to as petitioner, is the surviving wife of Adelbert Larson, the administrator de bonis non of whose estate is petitioner in Docket No. 88814. Adelbert E. Larson, hereinafter referred to as decedent, died testate on June 7, 1934. Under decedent's will executed May 31, 1934, the Yakima First National Bank of Yakima, Washington, hereinafter referred to as executor, was appointed executor.

On June 13, 1934, decedent's will was admitted to probate and the bank duly qualified as executor. The executor employed a firm of attorneys to attend to legal matters arising in connection with the estate. At the request of petitioner the executor also employed Shirley D. Parker, petitioner's son, at a salary of \$1,000 a month, to perform services relating to administration of the estate.

Under date of June 14, 1934, petitioner, as surviving wife of decedent, petitioned the court, sitting in probate, for a widow's allowance. The petition stated:

#### 3.

That no inventory and appraisement has yet been made, but that the value of said estate,



consisting of the community property of the decedent and your petitioner, is approximately \$1,500,000.00.

4.

That it is necessary that your petitioner have an allowance for her support and maintenance, and that \$5000.00, cash, and the further sum of \$1500.00 a month, payable monthly, is a reasonable, proper and necessary amount to maintain and support the petitioner and the family residence of the decedent and your petitioner in the manner to which she has been accustomed:

On the same date the court ordered the executor to pay petitioner the sums requested in her petition "until the further order of this court \* \* \*."

At the time of decedent's death all the real and personal property owned by petitioner and decedent was community property. The value of this property, including the interest of petitioner as appraised by duly appointed appraisers of decedent's estate, was \$2,353,480.79. Included in the community property of petitioner and decedent were 210,974 shares of stock of the Sunshine Mining Co.

Decedent's will provided for legacies aggregating \$482,000 and named petitioner residuary legatee. It also provided:

Seventeenth: The executor of my estate shall have three years if necessary to liquidate enough property to pay all of the above bequests.

Claims filed against decedent's estate totaled \$112,140.51.

At the time of his death decedent was president of the Sunshine Mining Co. Prior to his death a plan had been discussed with regard to listing the stock of Sunshine Mining Co. on the New York Curb Exchange. Decedent had not been in favor of the plan. The plan had for its purpose the enhancing of the value of the mining company's stock. After decedent's death the plan was again considered. It was initiated by Carl M. Stolle of Grande, Stolle & Co., who was associated with Walter Seligman of New York City, the owner of a large block of stock in the Sunshine Mining Co.

Stolle approached the president of the bank in regard to the participation of the estate of decedent in the listing plan and stated that a certain number of shares would have to be optioned and sold by the four majority shareholders of the mining company in order that the plan might be a success. The shares which Stolle wished to purchase and obtain options to purchase amounted to approximately 40 percent of the total shares held by the four shareholders. The shareholders who were asked to participate in the plan were Alexander Miller and wife, Mrs. N. P. Hull, J. B. Cox, and decedent's estate.

On June 30, 1934, the executor of decedent's estate entered into five option agreements covering a total of 70,000 shares of Sunshine Mining Co.



stock. The option agreements were identical, with the exception of the number of shares covered thereby. The provisions of these agreements were as follows:

For and in consideration of the sum of **One** and No/100 Dollars (\$1.00) paid by Grande, Stolle & Company, a Washington corporation, to the Yakima First National Bank, a corporation, as the duly appointed, qualified and acting executor of the estate of A. E. Larson, deceased, receipt of which is hereby acknowledged, the undersigned, said executor, does hereby give and grant unto said Grande, Stolle & Company, a corporation, an option and right to purchase [40] 10,000 shares of capital stock of the Sunshine Mining Company in the sum of \$7.00 per share.

This option shall continue in force and effect from the date hereof until four months after the listing of the stock of Sunshine Mining Company on the New York Curb Exchange and in no event beyond the 31st day of December, 1934, at 5:00 o'clock p. m., and on said date, whichever occurs first, this said option and all rights hereunder shall terminate.

The said undersigned does further agree to deposit said stock, to-wit, 10,000 shares, in escrow with the Yakima First National Bank at Yakima, Washington, with instructions to said bank to surrender all or any portion thereof to Grande, Stolle & Company, a corporation, upon

its payment to said bank for the account of said Yakima First National Bank, a corporation, as executor, the purchase price per share above set out, the expense of said escrow to be borne by Grande, Stolle & Company, a corporation.

It is understood that during the life of this said option the undersigned agrees that it will not sell or dispose of any of its stock now owned in the Sunshine Mining Company, a corporation, except that during the life of this said option said undersigned may sell not to exceed one thousand (1000) shares of its said stock, provided that said Grande, Stolle & Company, a corporation, shall have the first right of refusal of said stock, should the undersigned elect to sell said one thousand shares, or any part thereof.

It is understood that this option is subject to the said Grande, Stolle & Company, a corporation, appointing an engineer, receiving said engineer's report on said Sunshine Mining Company's properties and completing the listing of the stock of said Sunshine Mining Company upon the New York Curb Exchange, and this option shall become null and void and of no force and effect in the event the appointment of said engineer, his report and the listing of said stock upon the New York Curb Exchange shall not be completed on or before the first day of September, 1934.

It is understood that in the event said engineer is appointed, his report made, and said listing completed on or before the first day of September, 1934, then in that event this option shall continue in full force and effect for a period of four months from the date of listing said stock on the New York Curb Exchange and not later than the 31st day of December, 1934, at the hour of 5 o'clock p. m., whichever date occurs first and thereafter this agreement shall be null and void.

Each of the option agreements was accompanied by a letter of escrow instructions. The certificates of stock enumerated by the option agreements and escrow instructions were as follows:

Certificate No.	Shares	Certificate No.	Shares
601.....	10,000	739.....	5,000
633.....	10,000	1346.....	30,000
654.....	5,000	2822.....	5,000
736.....	5,000		

These certificates, together with option agreements and escrow instructions, were deposited with the Yakima First National Bank in escrow on June 30, 1934. Similar option agreements were entered into between Grande, Stolle & Co. and the other three majority shareholders. [41]

Petitioner and her son, Shirley D. Parker, left for a trip to California on June 14, 1934, and did not return to Yakima until about the middle of July 1934. Neither petitioner nor her son knew of the option transactions until after their return from

California. Upon her return from California in July 1934, petitioner requested that all matters affecting her interest in decedent's estate be handled by Parker.

Parker was advised of the options granted by the executor. On July 26, 1934, with Parker's consent and approval, the executor petitioned the Probate Court for authority to grant options to purchase the 70,000 shares of stock (which the executor had already optioned) and to sell immediately 10,000 shares of that stock. In its petition the executor stated:

That it is necessary that some part of the personal property of said estate be sold to pay the specific bequests provided in the will herein, and that your petitioner believes that said offer of the Grande, Stolle & Company is the best offer that could be received for a portion of said stock in the Sunshine Mining Company;

\* \* \* \* \*

On the same date the court entered an order containing the following provisions:

Now, therefore, it is ordered that the executor be and it is hereby authorized to carry out such agreement of sale to said Grande, Stolle & Company as outlined in said petition; and it is further

Ordered that all acts of said executor heretofore done in connection therewith are hereby fully and completely ratified and approved.

On July 31, 1934, the executor petitioned the court for authority to sell to Grande, Stolle & Co. 5,000 shares of Sunshine Mining Co. stock in addition to the 10,000 shares already authorized to be sold. On the same date the court entered an order containing the following provisions:

Now, therefore, it is ordered that the executor be and it is hereby authorized to sell 15,000 shares of stock of the Sunshine Mining Company for the net price of \$5.82½ per share; and

It is further ordered that this order shall supersede the order made on the 26th day of July, 1934, insofar as the sale of 10,000 shares of stock *were* concerned, but shall have no effect upon the order permitting the executor to grant an option to said Grande, Stolle & Company for the sale of 70,000 additional shares.

On August 2, 1934, the estate received the sum of \$87,375 from the sale of 15,000 shares of stock of Sunshine Mining Co. The 70,000 shares covered by the five option agreements were sold at intervals throughout the year 1934, the estate receiving therefor a total sum of \$483,000. The shares sold under the options were [42] those represented by the certificates enumerated in the option agreements.

Neither petitioner nor Parker ever gave permission to sell any of petitioner's one-half interest in the community property belonging to the estate of



decedent and petitioner. There was no understanding that petitioner's one-half interest was affected by the stock sales.

Under date of May 1, 1935, the executor of decedent's estate filed with the Probate Court a petition for partial distribution, stating as follows:

1.

That the final report of your petitioner as executor herein is on file and that such final report, together with the inventory shows that included within the estate herein was a total of 210,974 shares of capital stock of Sunshine Mining Company, a corporation, of which a total of 85,000 shares have been sold, leaving in the possession of the executor, your petitioner herein, shares to the number of 125,974, of which said shares Rose B. Larson, as surviving spouse, is the owner of 105,487.

2.

That the said Rose B. Larson, as surviving spouse, desires to have distributed to her 15,000 shares of said stock and that your petitioner, therefore, prays for an order of the court permitting and authorizing it to distribute to the said Rose B. Larson forthwith, 15,000 shares of stock of Sunshine Mining Company.

On the same date the court entered an order containing the following provisions:

\* \* \* it appearing to the court that included within the assets of the above entitled estate was an aggregate of 210,974 shares of the capital stock of the Sunshine Mining Company and that all of said property was community property of the decedent and Rose B. Larson, his widow, and

It further appearing that said Rose B. Larson is entitled, as her share of the community property, to receive from said executor, upon the closing of said estate, a total of 105,487 shares, and no good reason appearing why a partial distribution should not at this time be made.

Now, therefore, it is ordered that the Executor herein be and it is hereby authorized and directed to distribute to said Rose B. Larson 15,000 shares of the Sunshine Mining Company, a corporation.

On July 2, 1934, the estate of decedent received a dividend of \$3,600 from the Surety Finance Co. of Yakima, Washington. In her income tax return for the year 1934 petitioner included the sum of \$1,570 representing one-half the sum of \$3,140, the amount of the dividend which had accrued at the date of death of decedent.

On December 19, 1934, the board of directors of the Surety Finance Co. declared a dividend payable on December 31, 1934. A check in the sum of \$3,600, payable to the order of decedent's estate, was issued

December 31, 1934, in payment of dividends on stock of the [43] Surety Finance Co. held by the estate. The check cleared through the bank on January 2, 1935. In the notice of deficiency respondent treated this payment as received December 31, 1934, and increased petitioner's gross income for the taxable year 1934 by \$1,800.

In his notice of deficiency relating to petitioner's income tax for the year 1934 respondent added to petitioner's gross income \$2,374.68, representing one-half of the interest on obligations held by the community which was received by decedent's estate during the period from June 7 to December 31, 1934. Respondent also added to petitioner's gross income for 1934 the sum of \$9,782.49 representing one-half of rentals of community property received by decedent's estate in the period from June 7 to December 31, 1934. Respondent increased petitioner's gross income for 1934 by the sum of \$33,453.64 representing one-half the amount of dividends from community property stock received by the estate of decedent from June 7 to December 31, 1934.

After decedent's death and during the year 1934 petitioner and Parker signed notes aggregating \$58,000 as comakers, thereby obtaining loans from the Yakima First National Bank. The loans were made entirely on the credit of petitioner and the proceeds were turned over to Parker, who used them for his own purposes. On December 20, 1934, interest on these notes in the sum of \$1,551.96 was



deducted by the bank from petitioner's bank balance. In a proceeding involving gift tax brought before this Board by petitioner for the year 1935 petitioner and respondent stipulated that petitioner made a gift of the proceeds of the loans to Parker in 1935 and petitioner paid a gift tax thereon. In her income tax return for the year 1934 petitioner deducted interest on the \$58,000 notes in the sum of \$1,901.96. Respondent disallowed the deduction.

The estate of decedent was in administration throughout the taxable year 1934. Petitioner kept her accounts and filed her returns on the cash basis. Petitioners' returns were filed with the collector for the district of Washington.

### OPINION.

Hill: The first issue is basic and its determination will affect most of the other questions before us in this proceeding. This issue concerns the treatment for income tax purposes of income from community property received by the estate of decedent during the period of administration of the estate. Petitioner contends that all such income received by the estate should be reported as income of the estate by the fiduciary representing the estate. Respondent con- [44] tends that the community income received by the estate is taxable one-half to the estate and one-half to the survivor of the community.

Petitioner and respondent do not differ on the question of whether petitioner as surviving spouse

has a vested interest in the community property. Respondent argues, however, that, since petitioner had a vested interest in the property, the income should be taxed to her. Petitioner's contention is that regardless of the fact that she had a vested interest in the property she was not entitled to its income during the period of administration. The applicable Federal statutes are section 161 (a) (3) and section 162 (c) of the Revenue Act of 1934.<sup>1</sup>

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<sup>1</sup>Sec. 161. Imposition of Tax.

(a) Application of Tax.—The taxes imposed by this title upon individuals shall apply to the income of estates or of any kind of property held in trust, including—

\* \* \* \* \*

(3) Income received by estates of deceased persons during the period of administration or settlement of the estate; and

Sec. 162. Net Income.

The net income of the estate or trust shall be computed in the same manner and on the same basis as in the case of an individual, except that—

\* \* \* \* \*

(c) In the case of income received by estates of deceased persons during the period of administration or settlement of the estate, and in the case of income which, in the discretion of the fiduciary, may be either distributed to the beneficiary or accumulated, there shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year, which is properly paid or credited during such year to any legatee, heir, or beneficiary, but the amount so allowed as a deduction shall be included in computing the net income of the legatee, heir, or beneficiary.

State laws concerning the phase of community property here under consideration are sections 1342 and 1419 of Remington's Revised Statutes of Washington.<sup>2</sup>

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<sup>2</sup>§1342. Descent of Community property.—Upon the death of either husband or wife, one-half of the community property shall go to the survivor, subject to the community debts, and the other half shall be subject to the testamentary disposition of the deceased husband or wife, subject also to the community debts. In case no testamentary disposition shall have been made by the deceased husband or wife of his or her half of the community property, it shall descend equally to the legitimate issue of his, her or their bodies. If there be no issue of said deceased living, or none of their representatives living, then the said community property shall all pass to the survivors to the exclusion of collateral heirs, subject to the community debts, the family allowance, and the charges and expenses of administration. \* \* \*

§1419. Community property, how administered.—A surviving spouse shall be entitled to administer upon the community property, notwithstanding any provisions of the will to the contrary, if the court find such spouse to be otherwise qualified; but if such surviving spouse do not make application for such appointment within forty days immediately following the death of the deceased spouse, he or she shall be considered as having waived his or her right to administer upon such community property. If any person, other than the surviving spouse, make application for letters testamentary on such property, prior to the expiration of such forty days, then the court, before making any such appointment, shall require notice of such application to be given the said surviving spouse, for such time and

The courts of the State of Washington have long adhered to the rule that on the death of either husband or wife the whole of the community property is subject to administration as the estate of the de-[45] ceased spouse. *Ryan v. Fergusson*, 3 Wash. 356; 28 Pac. 910; *In re Guye's Estate*, 54 Wash. 264; 103 Pac. 25; *F. T. Crowe & Co. v. Adkinson Construction Co.*, 67 Wash. 420; 121 Pac. 841; *Stanton v. Everett Trust & Savings Bank*, 145 Wash. 165; 259 Pac. 10. Thus the entire income on community property during the period of administration is receivable by the estate.

We are of the opinion that the entire income from community property of decedent and petitioner during the period of administration was taxable to the estate. The instant case is not distinguishable from *Barbour v. Commissioner*, 89 Fed. (2d) 474. There community property stock was sold after the death of the husband but during the period of administration of his estate. The Circuit Court of Appeals for the Fifth Circuit held that income received by the administrator of the estate during the period of administration was taxable in its entirety to the estate. We have recently approved this rule. *Estate of Lucile Gruy*, 42 B. T. A. 1279. We have shown above that the Wash-

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in such manner as the court may determine, unless such applicant show to the satisfaction of the court that there is no surviving spouse or that he or she has in writing waived the right to administer upon such community property. \* \* \*



ington authorities have laid down the rule that community property is subject to administration as the estate of deceased spouse. Those cases do not differ materially from the Texas authorities relied upon by the court in the Barbour case. Respondent cites the case of *George Drumheller*, 27 B. T. A. 209, for the proposition that one-half of the community income is taxable to petitioner. In that proceeding, however, the instant problem was not before us. That case is not controlling because the specific question we are now considering was not in controversy.

This was not the case of "a nonintervention will" in which, upon a showing of solvency, the estate may be administered without court approval. Here each sale and distribution required court sanction and petitioner could only receive the income in question as a distribution from the estate. The facts of the case at bar present petitioner's view in the strongest possible light. Since the community property was subject to administration and income therefrom was receivable by the estate during administration, we believe it would be contrary to the intentment of section 161 (a) (3) of the Revenue Act of 1934 to tax any part of that income to petitioner. In spite of petitioner's vested interest in the property, she had no right to the income during the taxable year. We hold that the income from community property subject to administration is taxable in its entirety to the estate of decedent during the period of administration.

The second and third issues relating to interest on obligations and rentals from property held by the community are necessarily determined by our decision on the first issue. We hold that no part of the sum of \$2,374.68, interest, nor the sum of \$9,782.49, rentals, which respondent included in petitioner's gross income, is taxable to peti- [46] tioner. The entire amounts are includable in income of the decedent's estate.

The next issue is whether or not any portion of the dividends on community stock is taxable to petitioner. This question is also determined by our disposition of the first issue. Petitioner contends, however, that she erroneously reported the sum of \$1,570 in gross income for the year 1934. The amount reported on her return represents one-half the sum of \$3,140, which is the portion of a \$3,600 dividend of the Surety Finance Co. which might be said to have accrued at the date of decedent's death. Since the dividend was not received until after the estate was in administration, no part of the dividend should have been included in petitioner's gross income. We hold that petitioner should not have included this amount in her 1934 income tax return.

In connection with this issue petitioner made a contention concerning the taxability of the proceeds of a dividend check in the sum of \$3,600, dated December 31, 1934. This contention turned upon whether or not the check was actually received during the taxable year. Because of our determination of the first issue, we need not consider whether the

check was actually received in the taxable year or in the year 1935.

The fifth issue is whether or not petitioner is taxable on gain from the sale of one-half of 85,000 shares of Sunshine Mining Co. stock which were sold by the estate of decedent in the taxable year. Petitioner contends that the shares sold came entirely from the interest of the estate. Respondent argues that it was the intent of the executor to sell shares from petitioner's interest as well as that of decedent's estate. He urges that the listing plan contemplated the sale and option of about 40 percent of each of four shareholders' holdings and that this intent would not be satisfied unless 40 percent of the entire holdings of the Sunshine Mining Co. stock in the hands of the executor was subject to option and sale. Respondent further argues that there was no immediate need for the sale of the stock, since the will of the decedent permitted the executor to have three years to liquidate the estate in order to pay bequests.

We are of the opinion that the shares in question were sold from the interest of decedent. We are convinced that petitioner gave neither actual nor tacit consent to the sale of shares from her interest. Although Parker, as her agent, approved the action of the executor in optioning the shares, it must be remembered that petitioner was residuary legatee and vitally interested in the preservation of the worth of the estate. Testimony at the hearing clearly indicated that the options and sales were to



enhance the value of the remaining shares in addition to obtaining funds for the payment of legacies.

[47]

The executor of the estate petitioned for the Probate Court's permission to option and sell the shares for payment of bequests. No citation of cases is necessary to demonstrate that petitioner's interest could not be sold to pay bequests under decedent's will. Although three years for liquidation of property to pay bequests was allowed to the executor under the will, it was certainly discretionary with the executor, after obtaining court approval, to liquidate a portion of the estate at an early date.

The factors which show undeniably that the interest in shares sold was that of the estate alone are the petition and order for partial distribution of the estate. The order of the court stated that "said Rose B. Larson is entitled, as her share of community property, to receive from said executor, upon the closing of said estate, a total of 105,487 shares." Since the entire community interest in the Sunshine Mining Co. shares aggregated 210,974 shares, the court's order indicates that one-half of the original number of shares was treated as the property of petitioner after the sale of 85,000 shares had been made. We consider the court's order a finding behind which we can not inquire. The Probate Court's determination, as evidenced by its order, must be binding as to which interest was disposed of by the options and sales. *Helvering v. Rhodes*, 117 Fed. (2d) 509. See *Mildred M. Hubbard*, 30 B. T. A. 619. Accordingly, we hold that no portion of the 85,000

shares optioned and sold by the executor of decedent's estate was sold from petitioner's interest. Respondent's determination was erroneous and is hereby overruled.

In connection with this issue respondent has urged an alternative contention that, in the event we find that the shares sold were not petitioner's, then she must be taxed upon dividends paid on her stock subject to administration. In the first issue we held that dividends paid on petitioner's stock in the hands of the executor were not taxable to petitioner while the stock was subject to administration. That issue disposes of respondent's alternative contention here.

The final issue is whether or not petitioner is entitled to a deduction for interest paid in the sum of \$1,901.96. Respondent contends that the obligations upon which the interest was paid were incurred by petitioner's son and that the interest is not deductible by petitioner. He argues that petitioner voluntarily satisfied the obligations of another.

Petitioner's obligation as comaker of the notes was both joint and several. The notes were at all times her personal obligations and amounts paid by her as interest must be considered interest paid on her indebtedness. *George A. Neracher*, 32 B. T. A. 236. Nor does the fact that petitioner later made a gift to her son of the amount [48] borrowed change the result. Petitioner, however, has proved payment of only \$1,551.96 as interest. Mere accrual of \$350 interest does not give rise to a deduction in that amount to a taxpayer on a cash basis. We hold that

respondent should have allowed petitioner a deduction of \$1,551.96 for interest paid in the taxable year.

Upon recomputation we shall give effect to the stipulations filed at the hearing disposing of issues relating to Docket No. 88814 and the issues relating to Docket No. 88813 for the year 1933.

Decision will be entered under Rule 50. [49]

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United States Board of Tax Appeals

Docket No. 88813

ROSE B. LARSON,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

### DECISION

Pursuant to the determination of the Board, as set forth in its report promulgated July 24, 1941, it is

Ordered and Decided: That for the years 1933 and 1934 there are deficiencies in income tax in the amounts of \$1,452.74 and \$52.91, respectively.

Enter:

Entered Nov. 13, 1941.

(Seal) (S) SAM B. HILL,

Member.

In the United States Circuit Court of Appeals  
for the Ninth Circuit

B. T. A. Docket No. 88813.

GUY T. HELVERING, Commissioner of Internal  
Revenue,

Petitioner on Review,

vs.

ROSE B. LARSON,

Respondent on Review.

PETITION FOR REVIEW AND  
ASSIGNMENTS OF ERROR

To the Honorable Judges of the United States Cir-  
cuit Court of Appeals for the Ninth Circuit:

Now Comes Guy T. Helvering, Commissioner of  
Internal Revenue, by his attorneys, Samuel O. Clark,  
Jr., Assistant Attorney General, J. P. Wenchel,  
Chief Counsel, Bureau of Internal Revenue, and  
Claude R. Marshall, Special Attorney, Bureau of  
Internal Revenue, and respectfully shows:

I.

JURISDICTION

That the petitioner on review (hereinafter re-  
ferred to as the Commissioner) is the duly ap-  
pointed, qualified and acting Commissioner of In-  
ternal Revenue, appointed and holding his office by  
virtue of the laws of the United States; that the re-

spondent on review, Rose B. Larson, (hereinafter called the taxpayer), is an individual residing at Yakima, Washington, and filed an individual income tax return for the taxable year ended December 31, 1934, in the office of the Collector of Internal Revenue for the District of Washington, located at Seattle, Washington, which said collection district is within the jurisdiction of the United States Circuit Court of Appeals for the Ninth Circuit, wherein this review is sought.

The Commissioner seeks a review of the decision of the United States Board of Tax Appeals pursuant to the provisions of Sections 1141 and 1142 of [51] of the United States Internal Revenue Code.

## II.

### PRIOR PROCEEDINGS

On January 27, 1937, the Commissioner in accordance with Section 272(a) of the Revenue Act of 1934 advised the taxpayer by registered mail that the determination of her income tax liability for the taxable year 1934, disclosed a deficiency in tax of \$69,243.49. Thereafter, on April 23, 1937, taxpayer filed an appeal from said notice of deficiency with the United States Board of Tax Appeals. The Commissioner filed his answer to the petition on May 17, 1937. The case was heard on November 12, 1940, at which time an amended petition and an answer to the amended petition were filed by the parties hereto. On July 24, 1941, the Board of Tax Appeals promulgated its findings of fact and opinion; and



on November 13, 1941, the Board of Tax Appeals entered its decision, ordering and deciding that there is a deficiency in income tax for the year 1934 in the amount of \$52.91.

### III.

#### NATURE OF CONTROVERSY

The questions presented for review are succinctly stated as follows:

1. Where taxpayer, a surviving spouse, and her deceased husband, who died on June 7, 1934, were residents of the State of Washington and all their property consisted of community property, and the estate of the decedent was in administration throughout the remainder of the taxable year 1934,—is the community income consisting of profits, rents, interest and dividends, all of which was received by the executor of the estate, taxable to the estate in toto under the provisions of Section 161(a)(3) of the Revenue Act of 1934, (as contended by the taxpayer and held by the Board); or taxable one-half to the estate and one-half to the taxpayer, (as contended by the Commissioner)?

[52]

2. If the aforesaid community income is taxable one-half to the taxpayer and one-half to the estate, were shares of certain stock sold by the executor during the year 1934 all from the interest of the decedent in the community property, (as contended by the taxpayer and determined by the Board); or one-half from the taxpayer's interest and one-half from

the decedent's interest, whereby one-half of the profit realized is taxable to the taxpayer, (as contended by the Commissioner)?

Rose B. Larson, "taxpayer" herein, is the surviving wife of Adelbert Larson, who died testate on June 7, 1934. The Yakima First National Bank was duly appointed the executor of the decedent's estate. The taxpayer and the decedent were residents of the State of Washington, one of the States having what is commonly known as "community property laws". The estate of the decedent was in administration throughout the taxable year 1934; and under the practice of the said State of Washington, the whole community property was subjected to administration by the decedent's estate.

On August 2, 1934, the estate received the sum of \$87,375.00 from the sale of 15,000 shares of stock of the Sunshine Mining Company; and during the remainder of the year 1934, it received \$483,000.00 from the sale of 70,000 shares of said stock, which resulted in an aggregate taxable profit of \$272,187.50. On July 2, 1934, the estate received a dividend of \$3,600.00 from the Surety Finance Company (of Yakima), of which \$3,140.00 was accrued at the date of death of decedent. On December 19, 1934, the board of directors of the Surety Finance Company declared a dividend payable on December 31, 1934 and a check in the amount of \$3,600.00, payable to the order of the estate, was issued December 31, 1934, in payment of dividends on stock of the said corporation held by the estate. The



estate also received interest in the amount of \$4,749.36 [53] on obligations held by it; rentals in the amount of \$19,564.98 from community property, and dividends in the amount of \$66,907.28 from other community property. The taxpayer reported only one-half of the sum of \$3,140.00 on her return for 1934, and the Commissioner included in her taxable income one-half of each of the other items of income received by the estate on the theory that one-half of the community income received by the estate during this period of administration was taxable to the surviving spouse under Section 161(a)(3) of the Revenue Act of 1934. The Commissioner also treated the dividend check in the amount of \$3,600.00 as having been received in 1934, although it cleared through the bank on January 2, 1935; also that one-half of the 85,000 shares of Sunshine Mining Company stock sold was from the taxpayer's interest in the community property, and that the dividends paid in respect to such shares disposed of were not includable in her income for 1934.

The Board of Tax Appeals held that the entire income from the community property of decedent and taxpayer during the period of administration was taxable to the estate and not to the taxpayer. The Board of Tax Appeals also determined that all the 85,000 shares of stock of the Sunshine Mining Company sold in 1934 came entirely from the interest of the estate, but refused to readjust the dividend income consequentially taxable to the tax-

payer, as alternatively pleaded by the Commissioner; likewise, holding all such income taxable to the estate.

The Commissioner submits that the decision of the Board of Tax Appeals in respect to the taxation of the entire community income to the estate is contrary to the law and the established practice of the Bureau of Internal Revenue. Although the Board recognized that the taxpayer had a vested interest in one-half of the community property, nevertheless its decision in effect divests her of that interest by taxing the entire income to the estate contrary [54] to the Revenue laws and Treasury Regulations.

The Board, in respect to the second question, held that neither the taxpayer nor Parker, her representative, ever gave permission to the executor to sell any of taxpayer's one-half interest in the community property belonging to the estate of the decedent and taxpayer. The Board concluded from the record, especially from the petition and order for partial distribution of the estate, that the interest in the shares sold was that of the estate alone.

The Commissioner submits that the evidence of record discloses that it was the intent of the parties, including the executor, to sell shares from taxpayer's interest as well as that of decedent's estate; that the listing plan contemplated the sale and option of about 40% of each of the four shareholders' holdings, and that this intent would not be satisfied unless 40% of the entire holdings of the Sunshine Mining Company stock in the hands of

the executor was subject to option and sale; that there was no immediate need to liquidate the estate to pay bequests; and that the petition and order of partial liquidation, prepared by attorneys for the executor, when considered with the other facts of record, do not negative the fact that the 85,000 shares sold included one-half of the taxpayer's interest in said shares; and that a Probate Court cannot authorize and make a distribution of property not in existence—if said orders of the said Probate Court are construed to have distributed the shares of the taxpayer already sold.

If this Honorable Court holds that the taxpayer is taxable on one-half of the income of the community property received during the period of administration, then the case should be remanded to the Board for further consideration of the collateral and alternative matters not decided by it, in view of its decision upon the primary issue involved. [55]

#### IV.

##### ASSIGNMENTS OF ERROR

That the Commissioner of Internal Revenue, being aggrieved by the opinion and decision of the United States Board of Tax Appeals in this proceeding, hereby petitions for a review of said opinion and decision by the United States Circuit Court of Appeals for the Ninth Circuit, and for the correction of the manifest errors which therein occurred and intervened to his prejudice. The errors committed by the Board, which are relied upon by

the Commissioner as the basis of this petition for review, are as follows:

That the Board of Tax Appeals erred:

1. In holding and deciding that the income on community property received by the executor of the estate during the period of administration is taxable entirely to the estate.

2. In failing to hold and decide that the income on community property received by the executor of the estate during the period of administration is taxable one-half to the taxpayer, the surviving spouse, and one-half to decedent's estate.

3. In holding and deciding that taxpayer's one-half of the community income was received by the estate within the meaning of Section 161(a)(3) of the Revenue Act of 1934.

4. In holding and deciding that, in spite of taxpayer's vested interest in the community property, she had no right to any share of the income during the taxable year.

5. In holding and deciding that no part of the sum of \$2,374.68, representing one-half of the interest on obligations held by the community which was received by the decedent's estate during the period June 7 to December 31, 1934, is taxable to the taxpayer in the taxable year 1934. [56]

6. In holding and deciding that no part of the sum of \$9,782.49, representing one-half of rentals of community property received by the decedent's estate in the period from June 7 to December 31,

1934, is taxable to the taxpayer in the taxable year 1934.

7. In holding and deciding that no part of the sum of \$33,453.64, representing one-half of the amount of dividends from community property stock received by the decedent's estate from June 7 to December 31, 1934, is taxable to the taxpayer during the taxable year 1934.

8. In failing to hold and find that a dividend check in the amount of \$3,600.00, issued to the decedent's estate on December 31, 1934, was received by the executor of the estate in the taxable year ended December 31, 1934.

9. In holding and deciding that no part of the sum of \$1,800.00, representing one-half of a dividend check issued to the decedent's estate on December 31, 1934, is taxable to the taxpayer in the taxable year 1934.

10. In holding and deciding that taxpayer should not have included in her income for the taxable year 1934 the sum of \$1,570.00, representing one-half of the amount of a dividend of the Surety Finance Company received by the decedent's estate on July 2, 1934, which had accrued at the date of death of decedent.

11. In holding and finding that no portion of the 85,000 shares of Sunshine Mining Company stock optioned and sold in 1934 by the executor of the decedent's estate was sold from taxpayer's interest in the community property, there being substantial



evidence to support a contrary holding and finding.

12. In failing to hold and find that one-half of the 85,000 shares of Sunshine Mining Company stock optioned and sold by the executor of the decedent's estate during 1934 was from the taxpayer's interest in the community property. [57]

13. In failing to hold and decide that one-half of the profit realized in the year 1934 in the amount of \$272,187.50 from the sale of 85,000 shares of Sunshine Mining Company stock by the decedent's estate is taxable to the taxpayer for the taxable year 1934, subject to statutory percentage limitations.

14. In holding and finding that the taxpayer gave neither actual nor tacit consent to the sale of one-half of the 85,000 shares of Sunshine Mining Company stock from her interest, there being no substantial evidence to support such a holding and finding, but there being substantial evidence to support a contrary holding and finding.

15. In holding and finding that neither the taxpayer nor her representative Parker ever gave permission to sell any of taxpayer's one-half interest in the community property belonging to the estate of decedent and the taxpayer, there being no substantial evidence to support such a holding and finding, but there being substantial evidence to support a contrary holding and finding.

16. In failing to hold and find that the taxpayer and her representative Parker gave permission and consent to the executor of the decedent's estate to

option and sell 42,500 shares of Sunshine Mining Company stock in 1934 from her interest of the said stock in the community property of the taxpayer and the decedent, there being substantial evidence to support such a holding and finding.

17. In failing to hold and find that one-half of the 85,000 shares of Sunshine Mining Company stock optioned and sold by the executor of the decedent's estate in 1934 were shares from the taxpayer's interest in the community property, there being substantial evidence to support such a holding and finding.

18. In holding and considering that the order of the Probate Court, under the circumstances, is "a finding behind which it can not inquire". [58]

19. In failing to hold and decide that the Probate Court could distribute by its order only such property as existed in the decedent and the taxpayer.

20. In failing to hold and decide (in the alternative—the Board having found and decided that the entire 85,000 shares of Sunshine Mining Company stock sold were from decedent's interest only) that dividends paid in 1934 on taxpayer's stock in the Sunshine Mining Company in the hands of the executor of the decedent's estate during the period of administration were taxable to her in 1934.

21. In that its opinion and decision are not in accord with the law and the regulations, and are not supported by substantial evidence, but are contrary thereto.



22. In ordering and deciding that for the year 1934 there is a deficiency in income tax in the amount of \$52.91.

23. In failing to order and decide that for the year 1934 there is a deficiency in the amount of \$69,243.49.

Wherefore, the Commissioner petitions that said findings of fact and opinion and decision of the United States Board of Tax Appeals be reviewed by the Circuit Court of Appeals for the Ninth Circuit; that a transcript of the record be prepared in accordance with the law and the rules of said Court and be transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors herein complained of may be reviewed and corrected by said Court.

(Signed) SAMUEL O. CLARK, JR.

Assistant Attorney General.

(Signed) J. P. WENCHEL

Chief Counsel,

Bureau of Internal Revenue,  
Attorneys for Petitioner on  
Review.

Of Counsel:

CLAUDE R. MARSHALL,

Special Attorney,

Bureau of Internal Revenue.

CRM/csl 2/1942

[Endorsed]: Filed Feb. 2, 1942. [59]

[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR  
REVIEW

To: H. B. Jones, Esq.,  
George C. Kinnear, Esq.,  
610 Colman Building,  
Seattle, Washington.

You are hereby notified that the Commissioner of Internal Revenue did, on the 2d day of February, 1942, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Board heretofore rendered in the above-entitled cause. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 2d day of February, 1942.

J. P. WENCHEL,  
Chief Counsel,  
Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 5th day of February, 1942.

(S) H. B. JONES

(S) GEORGE C. KINNEAR

Counsel for Respondent on Review.

CRM/esl 1/1942.

[Endorsed]: Filed Feb. 11, 1942. [60]

[Title of Circuit Court of Appeals and Cause.]

NOTICE OF FILING PETITION FOR  
REVIEW

To: Rose B. Larson,  
Beverly Hills, California.  
(formerly) Yakima, Washington.

You are hereby notified that the Commissioner of Internal Revenue did, on the 2d day of February, 1942, file with the Clerk of the United States Board of Tax Appeals, at Washington, D. C., a petition for review by the United States Circuit Court of Appeals for the Ninth Circuit, of the decision of the Board heretofore rendered in the above-entitled cause. A copy of the petition for review and the assignments of error as filed is hereto attached and served upon you.

Dated this 2d day of February, 1942.

J. P. WENCHEL,  
Chief Counsel,  
Bureau of Internal Revenue.

Personal service of the above and foregoing notice, together with a copy of the petition for review and assignments of error mentioned therein, is hereby acknowledged this 11th day of February, 1942.

(S) ROSE B. LARSON,  
Respondent on Review.

CRM/csl 2/1942

Service is hereby accepted this 11th day of February, 1942. ROSE B. LARSON.

[Endorsed]: Filed Feb. 13, 1942. [61]

[Title of Circuit Court of Appeals and Cause.]

### STATEMENT OF POINTS

Comes Now the Petitioner on Review herein and makes this concise Statement of Points on which he intends to rely on the review herein, to-wit:

The United States Board of Tax Appeals erred:

1. In holding and deciding that the income on community property received by the executor of the estate during the period of administration is taxable entirely to the estate.

2. In failing to hold and decide that the income on community property received by the executor of the estate during the period of administration is taxable one-half to the taxpayer, the surviving spouse, and one-half to decedent's estate.

3. In holding and deciding that taxpayer's one-half of the community income was received by the estate within the meaning of Section 161(a)(3) of the Revenue Act of 1934.

4. In holding and deciding that, in spite of taxpayer's vested interest in the community property, she had no right to any share of the income during the taxable year.

5. In holding and deciding that no part of the sum of \$2,374.68, representing one-half of the interest on obligations held by the community which was received by the decedent's estate during the period June 7 to December 31, 1934, [62] is taxable to the taxpayer in the taxable year 1934.

6. In holding and deciding that no part of the sum of \$9,782.49, representing one-half of rentals of community property received by the decedent's estate in the period from June 7 to December 31, 1934, is taxable to the taxpayer in the taxable year 1934.

7. In holding and deciding that no part of the sum of \$33,453.64, representing one-half of the amount of dividends from community property stock received by the decedent's estate from June 7 to December 31, 1934, is taxable to the taxpayer during the taxable year 1934.

8. In failing to hold and find that a dividend check in the amount of \$3,600.00, issued to the decedent's estate on December 31, 1934, was received by the executor of the estate in the taxable year ended December 31, 1934.

9. In holding and deciding that no part of the sum of \$1,800.00, representing one-half of a dividend check issued to the decedent's estate on December 31, 1934, is taxable to the taxpayer in the taxable year 1934.

10. In holding and deciding that taxpayer should not have included in her income for the taxable year 1934 the sum of \$1,570.00, representing one-half of the amount of a dividend of the Surety Finance Company received by the decedent's estate on July 2, 1934, which had accrued at the date of death of decedent.

11. In holding and finding that no portion of the 85,000 shares of Sunshine Mining Company



stock optioned and sold in 1934 by the executor of the decedent's estate was sold from taxpayer's interest in the community property, there being substantial evidence to support a contrary holding and finding. [63]

12. In failing to hold and find that one-half of the 85,000 shares of Sunshine Mining Company stock optioned and sold by the executor of the decedent's estate during 1934 was from the taxpayer's interest in the community property.

13. In failing to hold and decide that one-half of the profit realized in the year 1934 in the amount of \$272,187.50 from the sale of 85,000 shares of Sunshine Mining Company stock by the decedent's estate is taxable to the taxpayer for the taxable year 1934, subject to statutory percentage limitations.

14. In holding and finding that the taxpayer gave neither actual nor tacit consent to the sale of one-half of the 85,000 shares of Sunshine Mining Company stock from her interest, there being no substantial evidence to support such a holding and finding, but there being substantial evidence to support a contrary holding and finding.

15. In holding and finding that neither the taxpayer nor her representative Parker ever gave permission to sell any of taxpayer's one-half interest in the community property belonging to the estate of decedent and the taxpayer, there being no substantial evidence to support such a holding and finding, but there being substantial evidence to support a contrary holding and finding.



16. In failing to hold and find that the taxpayer and her representative Parker gave permission and consent to the executor of the decedent's estate to option and sell 42,500 shares of Sunshine Mining Company stock in 1934 from her interest of the said stock in the community property of the taxpayer and the decedent, there being substantial evidence to support such a holding and finding.

17. In failing to hold and find that one-half of the 85,000 shares of Sunshine Mining Company stock optioned and sold by the executor of the decedent's estate in 1934 were shares from the taxpayer's interest in the community [64] property, there being substantial evidence to support such a holding and finding.

18. In holding and considering that the order of the Probate Court, under the circumstances, is "a finding behind which it can not inquire".

19. In failing to hold and decide that the Probate Court could distribute by its order only such property as existed in the decedent and the taxpayer.

20. In failing to hold and decide (in the alternative—the Board having found and decided that the entire 85,000 shares of Sunshine Mining Company stock sold were from decedent's interest only) that dividends paid in 1934 on taxpayer's stock in the Sunshine Mining Company in the hands of the executor of the decedent's estate during the period of administration were taxable to her in 1934.

21. In that its opinion and decision are not in accord with the law and the regulations, and are not supported by substantial evidence, but are contrary thereto.

22. In ordering and deciding that for the year 1934 there is a deficiency in income tax in the amount of \$52.91.

23. In failing to order and decide that for the year 1934 there is a deficiency in the amount of \$60,443.49.

(Signed) SAMUEL O. CLARK, JR.  
Assistant Attorney General.

(Signed) J. P. WENCHEL  
RLW  
Chief Counsel,  
Bureau of Internal Revenue,  
Attorneys for Petitioner on  
Review.

CRM/csl

3/20/42

Service of a copy of the within Statement of Points to be relied upon is hereby admitted this 31st day of March, 1942.

H. B. JONES  
Attorney for Respondent on  
Review.

[Endorsed]: Filed Apr. 28, 1942. [65]

[Title of Circuit Court of Appeals and Cause.]

## STATEMENT OF EVIDENCE

The following is a statement of evidence in narrative form relating to the statement of points to be relied upon by the Commissioner of Internal Revenue adduced at the hearing of the above-entitled proceeding before the United States Board of Tax Appeals, at Seattle, Washington, on November 12, 1940, Honorable Sam B. Hill, Member of the United States Board of Tax Appeals, presiding. H. B. Jones, Esq., and George C. Kinnear, Esq., represented the taxpayer and B. H. Neblett, and Clyde R. Maxwell, attorneys, represented the Commissioner of Internal Revenue. Thereupon, the case of Rose B. Larson, B.T.A. Docket No. 88813, was consolidated for hearing with the case of the Estate of A. E. Larson, Deceased, B.T.A. Docket No. 88814, which is not involved in this proceeding.

Mr. Neblett in his opening statement for the Government stated, among other things:

“Respondent will show for the year 1934 Mrs. Larson filed a separate return, Number 1040, in which she reported one-half of the community income from January 1st, 1934, to June 7, 1934, and claimed one-half of the deductions for the same period, plus \$1,901.96 additional interest and \$1,125 additional contributions. A return Form #1040 was filed in the name of A. E. Larson, Deceased, [66] for the period January 1, to June 7, 1934, in which

was reported one-half of the community income for the above period and one-half of the deductions for the same period. A return Form 1040 was also filed in the name of A. E. Larson estate for the period June 8 to December 31, 1934, in which was reported the total income received on the community property for that period. Deductions for that period were claimed in the amount of \$32,467.44. Mrs. Larson, in her separate return for the calendar year 1934, reported no income received on community property from the date of the death of her husband, June 7, 1934, to December 31, 1934. She received no income for that period from any separate property nor for any personal services.

The Commissioner included in Mrs. Larson's return for 1934 one-half of the income received on the community property for the period June 7, to December 31, 1934, and adjusted the deductions on a community property basis. The over-assessment reflected of \$1,928.92, in the case of A. E. Larson Estate for the period of June 7, to December 31, 1934, is due principally to eliminating from that return one-half of the income reported and transferring same to Mrs. Larson's separate return.

Now, your Honor, I have carefully detailed the exact steps taken as far as the returns are concerned in this case, so that your Honor may have clearly before you whether this income

is taxable to the fiduciary or to the surviving spouse.

Now, Mr. Jones has referred to the fact that we have taxed both Mrs. Larson and the estate with this income. That is true. The Commissioner first taxed it to Rose B. Larson on the theory that it was her income. The petitioner protested it and the statute was running, so the Commissioner also taxed it to the estate which is the contention made by the opposing counsel at this time."

Thereupon, an agreed stipulation of facts was offered and received in evidence. (A copy of the stipulation, (together with all exhibits annexed thereto,) is made a part of the record on review herein.)

Thereupon,

RUTH BOUCHER HOWELL,

a witness on behalf of the taxpayer, was sworn and testified as follows:

Direct Examination

(By Mr. Jones):

I am secretary to W. E. Lucas at the National Bank of Commerce. I was connected with the Yakima First National Bank in 1934 as secretary to Mr. [67] E. P. Hoffman, who was the trust officer. The Larson Estate was handled in our department and it occupied almost all of our time and attention.



(Testimony of Ruth Boucher Howell.)

There was no one else in the trust department besides Mr. Hoffman and myself. The bank being the executor of the Larson Estate, the trust officers and the senior officers of the bank handled the affairs of the Larson Estate. Mr. Hoffman has since died. I kept all the records of income and disbursements of the Larson Estate. I was familiar with the practice of the bank as to making credits or debits against the account, and as to whether those were customarily made. I handled that sort of thing myself. I had worked in all of the interior departments before going in the trust department. We had a practice of cleaning up our work each day as far as the transactions relative to the trust went. It occupied all of our time and attention, and we tried to keep everything right up currently.

If we received a check by the close of banking hours, which in our case was 3 o'clock, particularly a check drawn on our bank, it was our practice to put that check in that day. We customarily accepted them beyond the close of banking hours somewhat; I would say perhaps within an hour. If we had received a check, say by 4 o'clock on a particular day and that check was on an account which was in our bank, it may not have been entered on our records on that date, but it would have gone to the credit; it would not have been cleared that day. The check itself would not have been cancelled until the following day. The check would go through on that day.



(Testimony of Ruth Boucher Howell.)

Thereupon, a check marked for identification as Petitioner's Exhibit No. 1 was shown the witness.

(The witness continuing): I presume that I have seen that check before. It is endorsed the way the checks for the estate were endorsed. [68]

"Mr. Jones: Well, I might state, your Honor, that the checks is the check of the Surety Finance Company dated at Yakima, Washington, December 31, 1934, 'Pay to the Order of the A. E. Larson Estate \$3600.' I am directing the question as to whether that was a '34 receipt or not.

Mr. Neblett: May I see it a moment?

Mr. Jones: You may.

Mr. Neblett: That is all right."

(Witness continuing):

That check has been cancelled; it was paid on the 2nd of January, 1935. In accordance with the manner in which we handled our affairs of the Larson Estate that would indicate that the check was probably received too late for clearance on the last day of the year.

"Mr. Neblett: That is objected to, your Honor. She doesn't know, apparently.

Mr. Jones: The best we can do in a case like this is to show what the probabilities were.

The Court: I will overrule it."

(Witness continuing):

From the perforations on the check, it appears that it cleared on the 2nd of January. Taking into

(Testimony of Ruth Boucher Howell.)

consideration the practice in our department to which I have testified, and the fact of the perforations indicating when it was cleared, the check appears to have been received in the bank on the second of January.

Thereupon, the check was offered and received in evidence without objection and marked Petitioner's Exhibit No. 1. Leave to substitute a photostatic copy was granted. (A photostatic copy is attached hereto and made a part hereof.)

### Cross Examination

(By Mr. Neblett):

Our bank's perforations on Petitioner's Exhibit No. 1, which show the figures, 1-2-35 (which is January 2, 1935), indicate to me that the check was received and cashed on January 2, 1935. The check endorsed "Yakima National Bank, Executor, Estate of A. E. Larson, deceased," was no doubt received by Mr. Hoffman and given to me at that particular time to supply this typewritten [69] endorsement. He would then sign it after I had supplied the typewritten endorsement. I would say that I supplied the typewritten endorsement on this check on the second of January, 1935. I base that purely from the fact that we completed each day's business as it came about.

The Surety Finance Company is in Yakima, Washington; it is about a block and a half from the Yakima National Bank. I would not say it was

(Testimony of Ruth Boucher Howell.)

likely that this check could have gotten in and been cashed on December 31, 1934, unless it had been delivered in person and apparently it was not, because it was a dividend check and dated the 31st day of December. It was mailed on that day and not received by us until the second of January. There is nothing on the check to indicate it was mailed or delivered in person.

Thereupon, there was offered in evidence as Petitioner's Exhibit No. 2 a resolution of the Surety Finance Company under which is shown the dividend check, which was received without objection and made a part of the record. (A photostatic copy of said exhibit is attached hereto and made a part hereof.) (Counsel for taxpayer consented to have a witness for the Commissioner heard out of order.)

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Thereupon,

ROBERT M. HARDY,

a witness on behalf of the Commissioner, was sworn and testified as follows:

Direct Examination

(By Mr. Neblett):

I was president of the Sunshine Mining Company in the latter part of 1934. I became president after Mr. Larson's death; he died on Thursday, June 7, 1934, and I was elected on June 11, 1934. I was

(Testimony of Robert M. Hardy.)

connected with the Estate of A. E. Larson, Deceased, in the year 1934 by being president of the Yakima First National Bank which was executor of his estate. [70]

I know Rose B. Larson, the petitioner (taxpayer) herein. She was the residuary legatee and surviving spouse of A. E. Larson, deceased.

During the lifetime of Mr. and Mrs. Larson, I was what you would call a rather close business friend of Mr. Larson. He was the first vice president of our bank and he was on the Board. He was on the Board of the Guaranty Trust Company, the same as I was. He was on our executive committee, and he was on the executive committee and the board of a holding corporation. I was president of the holding corporation and the bank, and vice president of the Guaranty Trust Company. I was mentioned in Mr. Larson's will as one of his beneficiaries. [71]

I know of a plan which had as its purpose the listing of the Sunshine Mining Company stock on the New York Stock Exchange.

This plan had been talked of prior to Mr. Larson's death. All I know about the plan before Mr. Larson's death is what I was told by Mr. Larson and some of the other directors. I had no direct contact with it at all. Mr. Larson talked to me about it a number of times.

"Mr. Jones: I will object to that as hearsay.

(Testimony of Robert M. Hardy.)

The Court: He hasn't said what he knew, though; so there is nothing in the record.

\* \* \* \* \*

A. It was pretty close to Mr. Larson's death, either on the day or the day after that, Mr. Stolle first came into the bank. Some ten days later, I should say, after I had become president of the Sunshine Mining Company and the bank had qualified as the executor of the Estate, he came in to talk to me about a plan about listing the stock on the New York Stock Exchange. At that time I told Mr. Stolle that I had only been president of the company for a very short time. I hadn't had a chance to get my feet on the ground and couldn't talk to him intelligently. Two days later, Mr. Alexander Miller, vice president, and who assumed the presidency after Mr. Larson's death and resigned and I became president, came in with Mr. Stolle and said to me that Mr. Stolle had said to him I wouldn't talk to him about the listing plan and I said that is true; and he said 'I think, Mr. Hardy, we should talk to him', and I said, 'All right, Mr. Miller, if you feel that way about it we will talk to him.'

We spent probably intervals of a day and a half talking to Mr. Stolle. I finally suggested to Mr. Miller that I thought Mr. Cox, who was a stockholder and a director, should be in on these conferences, too. I called him up. I know it was along late in the afternoon for he drove from about three



(Testimony of Robert M. Hardy.)

o'clock to get to Yakima that night. The three of us met with Mr. Stolle that day."

(Witness continuing):

Mr. Miller was the second largest stockholder of the company; and Mr. Cox was one of the largest stockholders.

After Mr. Cox, Mr. Miller, Mr. Stolle and I worked this thing over, for, oh, [72] another day—we agreed that we would go ahead, Mr. Stolle requiring that the largest stockholders option to him approximately 40% of the stock. There were two very good reasons advanced why this stock should be listed on the New York Curb Exchange. One was that it would enlarge the market. The Spokane market, where it was listed, if you put 1,000 shares for sale up there it would take them two or three days to sell it. If you put more, you might break the market. So it enlarged the market and thereby you had a pretty fair chance of enhancing the value.

It was generally discussed that it would enhance the value; that is, it was our opinion that it would enhance the value, if the stock was listed on the New York Curb Exchange. I know whether there were any expenses connected with the plans for listing the stock on the New York Curb Exchange. Mr. Stolle, as far as the expenses we had at Yakima, paid us himself.

70,000 shares of the Larson Estate were optioned to Seligman and Company. [73]



(Testimony of Robert M. Hardy.)

As a result of these option transactions with the large stockholders of Sunshine Mining Company, Seligman just got the options for putting up this expense money. I do not know how many options Seligman and Company got through Mr. Stolle.

At the meeting of these large stockholders, namely, the Larson Estate, Mr. Miller, Mr. Cox, and Mr. Hull, it was generally stated that about 40% of the entire holdings would be required to meet Mr. Seligman's demands.

The Larson Estate owned approximately 210,900 and some odd shares. I discussed with Mr. Stolle the question of options on the shares held by the Larson Estate.

“Q. (By Mr. Neblett) When did this conference take place and what was said at this conference between you and Mr. Stolle?

Mr. Jones: I make this further objection that this is in no wise binding upon the petitioner here.

The Court: If it doesn't appear to be it will not be considered. Go ahead.”

(Witness continuing):

It was during the time of our conference with Mr. Miller and Mr. Cox and Mr. Stolle and myself that those options on the Estate's shares were considered and talked about. [74]

(Witness continuing):

It is true that at these conferences, the other large stockholders agreed to similar options of their

(Testimony of Robert M. Hardy.)

stock. I would have to say that there was always a proviso with what I said to Mr. Stolle—two provisos, in fact; first, that the court approve it, and second, that Mrs. Larson approve it.

“Q. (By Mr. Neblett) Now, do you know whether or not Mrs. Larson approved it, and the court did approve the sale by the bank, or the executor of the estate?

A. I think I can't answer that question with a 'yes' or 'no'.

Q. You can't answer that question?

A. I can't answer the question 'yes' or 'no'.

The Court: What did happen?

The Witness: You want me to tell you the story?

The Court: Yes.

The Witness: I went up to see Mrs. Larson and explained the whole thing to her. I had the options with me. She said, 'Mr. Hardy, I am not very well. I wish you would take that up with Shirley and whatever you two decide will be all right.' ”

(Witness continuing):

I took the matter up with Shirley and had a conference with him about it. Grover Burrows, a partner of A. E. Larson in the automobile business, was also at the conference, because he was a close friend of Mr. Larson before his death. I suggested that he be present at the conference. Mr. Parker, Mr. Burrows and I discussed this matter for practically an afternoon. There was one legal point in the thing

(Testimony of Robert M. Hardy.)

that I could not answer, so we agreed to meet at Mr. Nat Brown's office, the attorney for the estate, the next morning and have him explain it to us. After that explanation was made, Mr. Parker agreed to it.

The stock pledged by Miller, Cox, Mrs. Hull, and Larson Estate was all Seligman and Company required for listing on the Curb Exchange—all they required was the largest stockholders and directors. All four had to option [75] or it was just no deal. All four did option the stock. The agreements with respect to optioning the stock was put in writing. Besides the 70,000 shares optioned by the Larson Estate, there were 10,000 shares, at first, agreed to be sold outright under what they called a sales agreement; that is, so much to be paid down and finally it was taken up at a price. The 10,000 shares were later increased to 15,000 shares. That made a total of 85,000 shares optioned and sold.

There was a sales agreement made in respect to the 10,000 shares. I don't believe there was any on the extra 5,000 shares. I think that was taken up immediately.

Thereupon, counsel for the Commissioner offered and there was received in evidence without objection five option contracts, all dated June 30, 1934, together with an escrow agreement attached to each, which were marked Respondent's Exhibit A and made a part of the record. (A photostatic copy of each of the documents contained in Respondent's

(Testimony of Robert M. Hardy.)

Exhibit A is attached hereto and made a part hereof.)

Mr. Neblett: The escrow agreements are dated June 30, 1934, and executed by the Yakima First National Bank, by E. P. Hoffman.

“Mr. Neblett: He is trust officer, as the duly appointed and acting executor of the estate of A. E. Larson, Deceased.

The Court: Very well.

Mr. Neblett: And the option agreement is entitled ‘Option agreement by Grande-Stolle and Company, a Washington corporation, to the Yakima First National Bank, a corporation, as a duly qualified executor of the Estate of A. E. Larson, Deceased, receipt of which is acknowledged, does hereby grant to Grande-Stolle and Company, a corporation, the right to purchase 10,000 shares of the capital stock of the Sunshine Mining Company, in the sum of \$7.00 per share.’

The Court: Yes. Well, just give a description as to the parties executing the agreement. [76]

Mr. Neblett: That one is signed and dated, ‘June 30, 1934, Yakima First National Bank, by E. P. Hoffman, trust officer of the estate of A. E. Larson, Deceased, by Carl M. Stolle, V. P.’

Now all of the other four options, your Honor, are similar in language to the one I have just mentioned.

The Court: All right.”

(Testimony of Robert M. Hardy.)

(Witness continuing):

I am familiar with the provision of the options on the last bottom page which states: "It is understood that during the life of this said option the undersigned agrees that it will not sell or dispose of any of its stock now held on the \* \* \* not to exceed 1,000 shares of its said stock, provided that said Grande-Stolle and Company, a corporation, shall have first right of refusing the stock."

I don't remember how many different agreements there were. The sale of the 70,000 were limited by a similar restriction.

"Mr. Neblett: If your Honor please, if you think it necessary, I can tell you what certificates were mentioned in each option.

The Court: Well, I will read that, if it is just for my information.

Mr. Neblett: I think there is sufficient to identify it now.

The Court: Yes, all right.

Mr. Jones: Well, Mr. Neblett, it is only a matter of identification. I have admitted the deficiency attached is the basis. We are not disputing that.

Q. (By Mr. Neblett) Mr. Hardy, do you know whether or not these certificates actually mentioned in the option agreements were the certificates that were later sold?

Mr. Jones: I am not disputing that, your Honor. They tie in with the exhibit.

The Court: All right.



(Testimony of Robert M. Hardy.)

Q. (By Mr. Neblett) Mr. Hardy, do you know whether or not the Court knew about the plan to list the Sunshine Stock on the New York Curb Exchange at the time the order approving the options was made?

Mr. Jones: May I ask the purpose of that question,—is it to impeach the order of the Court? [77]

Mr. Neblett: I just wanted to know——

The Court: As to whether the Court approved the plan for listing?

Mr. Neblett: Yes.

The Court: And the option agreements and so forth, looking to that end?

Mr. Neblett: Yes, that is all.

The Court: I will overrule the objection.”

(Witness continuing):

The Court knew about the general plan for listing. We petitioned the Court to give us an order that we could enter into a sale or option agreements for the sale of the stock to Grande-Stolle and Company. We figured we were selling 40% of the total stock. As to the legal end as to whose it was, or what not, that was up to our attorneys. We figured we were selling 40% of the 210,974 shares. We knew about the petition to sell personal property which covers the sale and option of this stock and the Court's order authorizing sale of personal property.

Thereupon, there was offered and received in evidence without objection a copy of a document re-



(Testimony of Robert M. Hardy.)

ferred to as "petition to sell personal property in the matter of A. E. Larson, Deceased, No. 8561," which was marked Respondent's Exhibit B and made a part of the record.

Thereupon, there was offered and received in evidence without objection a copy of a document referred to as "Order authorizing sale of personal property, dated July 26, 1934, and signed by R. B. Milroy, Court Commissioner, in the matter of A. E. Larson, Deceased, No. 8501," which was marked Respondent's Exhibit C and made a part of the record.

(A photostatic copy of each of Respondent's Exhibit B and C is attached hereto and made a part hereof.)

(Witness continuing):

I understood that the Court before entering its order (Resp. Ex. B) fully understood the plan of listing the stock on the New York Curb Exchange and the [78] options entered into pursuant to that plan, because we so explained it to the Judge and that he approved the sale and option of this stock.

"The Court: Well, this order of sale here,—what is this,—an order confirming sale or approving sale, or what is it?

Mr. Neblett: It is an order authorizing the sale of personal property, and reads as follows: 'Dated the 26th day of July, 1934, R. B. Milroy, Court Commissioner'.

(Testimony of Robert M. Hardy.)

The Court: Well, that ratifies all the acts heretofore done and in connection therewith. Now, if you haven't shown what acts were done, you might show that.

Q. (Mr. Neblett) What acts had you performed, Mr. Hardy, relative to,—

A. (Interposing) Well, what we had done was to confer with Mr. Miller and Mr. Cox and agree with them that we would sell, if they would sell.

Q. And was the 40% mentioned?

A. Well it happened to work out around 40%.

Q. Yes.

A. Some sold a little bit more, and some a little bit less.

Q. Yes.

A. The Larson estate actually sold a little bit less than 40%.

Q. Yes.

A. Until that 5,000 additional was added.

Q. Why?

A. In the first order, it was a little less.

Q. Yes.

A. I don't remember the amount that Mr. Stolle said that he had to have from the stockholders, but you can work it out. It happened to work out close to 40%.

Q. That each of the larger stockholders sold?

A. Yes.

Mr. Neblett: That is all." [79]

(Testimony of Robert M. Hardy.)

Cross Examination

(By Mr. Jones):

The trust officer in the bank handled all the details of the Larson Estate. I handled all the things that you might call matters of policy or any larger problems. In the negotiation with Mr. Stolle, I was acting in the capacity of president of the executor bank. I was not acting in any sense as president of the Sunshine Mining Company. I had no personal stockholdings in the Sunshine Mining Company at that time, but Mr. Miller had placed a thousand shares in my name so that I could qualify as a director, and I did from time to time purchase some stock. I had some in contemplation. Within 90 days after Mr. Larson's death, I had acquired 4500 shares. I paid higher prices than these option agreements represent. It is true, later on, that the more I could make the stock worth, the better off I was. Grande-Stolle and Company fixed a certain amount of stock that they wanted to get tied up by a number of shares from the largest stockholders—it happened to work out 40%. They fixed some certain specific number of shares. Not all the stockholders of Sunshine Mining Company optioned stock to them.

I don't know how many shares Mr. Miller optioned to them. Mrs. Miller optioned to them; she optioned, I think, 50%. The Hull family had some stock; they all optioned portion of the stock they held. It really was the four directors in the imme-

(Testimony of Robert M. Hardy.)

diate family holdings,—Cox, Miller, Hull and Larson—they wanted to tie up. Mr. Stolle wanted a certain aggregate number of shares out of those four holdings. In the case of the Larson interests, it amounted to about 85,000 shares.

“Q. Now, he didn’t care whether it came out of Mr. Larson’s half or Mrs. Larson’s half, did he?

Mr. Neblett: That is objected to.

The Court: Overruled.

A. I don’t think he cared where it came from.”

[80]

(Witness continuing.)

He did not say anything to me to indicate that he was wanting to tie up Mr. Larson’s shares as distinguished from Mrs. Larson’s shares.

“Q. Did you ever discuss with Mrs. Larson that she was tying up her shares as distinguished from the Estate shares?

A. I discussed with her that the whole amount was being tied up, yes, sir.

Q. That is, the whole 75,000 or 80,000 shares?

A. Yes, sir.

Q. Did you ever discuss with her that it was distinguishable,—her shares from the Estate shares?

A. No, sir.

Q. Did you ever discuss that with Mr. Parker,

A. No, sir.

Q. Now, this provision that counsel calls your attention to about not making any sales of over 1,000 shares until the option ran out which I think was at the end of ’34,—that was just, you say, to tie the holdings up for that period?

(Testimony of Robert M. Hardy.)

A. Yes, sir.

Q. Now, as a matter of fact, didn't you know that the fact that the stock was in the estate necessarily tied it up until after the end of 1934, didn't it?

A. I didn't think so.

Q. Well, you knew that the six months' period on filing claims and before distribution could be made wouldn't run out until the end of the year, did you?

A. But I at all times thought we could get an order of Court and sell some of the stock.

Q. Yes, under an order of court? A. Yes.

Q. But unless you got an order of court to sell it, none of that stock was going to be free for sale by any beneficiary during that year, was it?

A. That was true."

(Witness continuing):

When we petitioned the Court to sell this stock, the petition was read by Mr. Brown in his office to Mr. Parker, Mr. Burrows, and myself before the order was signed.

The purpose of selling that stock, as far as the Larson Estate was concerned, was to pay debts of the estate and to pay bequests. The estate had to pay around \$100,000 of debts. [81]

"Q. Didn't the Estate have considerably more than enough to pay those debts without having to sell any of that Sunshine Mining Company stock?

A. I wouldn't say 'yes' to that, Mr. Jones. That



(Testimony of Robert M. Hardy.)

was about—Mr. Larson had a lot of property and buildings, but that was about the most salable thing that he had, Sunshine stock; in fact, the only real salable thing.”

(Witness continuing):

Sunshine Mining Company at that time was on a 16¢ dividend basis; it made one 16¢ dividend. I am a little hazy as to what they paid the first quarter of 1934; but the second quarter, they paid 16¢, and my memory is that that was the first time they paid 16¢. From that time on, they continued paying 16¢ a quarter. The estate had from that source \$30,000 or \$35,000 a quarter in dividends. The Larson Building at that time was running at a loss, but the estate received a regular income from it. I don't remember how much. The Donnelly Hotel brought in around \$1,500 or \$1,600 a month.

At the time the application for sale was made, I understood that the petition for the sale of the Sunshine Stock recited: “That it is necessary that some part of the personal property of said estate be sold to pay the specific bequests provided in the will herein, and that your petitioner believes that said offer of the Grande, Stolle & Company is the best offer that could be received for a portion of said stock in the Sunshine Mining Company.”

Really the purpose of selling the stock was to clean up everything and close the estate, including whatever debts and——. I remember testifying in



(Testimony of Robert M. Hardy.)

a suit entitled "In the matter of the Estate of A. E. Larson, deceased, and also Shirley D. Parker, as administrator de bonis non with the will annexed of the estate of A. E. Larson, deceased, Plaintiff, vs. R. M. Hardy, et al., Defendants" that was brought in the Court of Yakima County.

"Q. Do you remember testifying this way:

'Q. Were these options for the purpose of listing this stock on the New York Stock Exchange?

'A. Well, in the case of Yakima First National Bank, the option on that stock, the purpose of doing that was that we were faced with having to pay about one-half a million dollars in bequests.'

Did you so testify?

A. Well, it has been about two years ago, but I think I did. [82]

Q. That is correct, is it?

A. That is correct.

'Q. Then it was by virtue of the Larson Estate that you reached out and got that?

'A. I say, so far as we were concerned, that was the motive in our options.'

Did you so testify?

A. I would think so, yes, sir.

Q. When you said that was the motive in our optioning, were you referring to the previous an-

(Testimony of Robert M. Hardy.)

swer that you wanted to have the funds on hand to pay about a half a million dollars in bequests?

A. Yes."

(Witness continuing):

And that was about the amount of bequests that I anticipated. Mr. Larson made bequests of slightly under \$500,000. I contemplated at that time that all of those bequests would have to be paid. At the time we optioned this stock, we anticipated the payment of the bequests in full. We did not even consider or discuss specifically as far as any legal description went in the matter of whose stock was being sold,—whether it was Mrs. Larson's stock or any interest she had, or Mr. Larson's interest. I think that was gone into specifically by the attorney for the Estate, Mr. Brown of Rigg, Brown & Halvorsen.

It was a supposition on my part when I testified on Direct Examination: That in tying up a certain number of shares, if we got 80,000 or 85,000 shares out of the Larson interests, that was all Mr. Stolle wanted and it didn't make any difference to him whether it came out of Mr. Larson's share or Mrs. Larson's share. That was my understanding. [83]

### Redirect Examination

(By Mr. Neblett):

When I stated I had some discussions with Mrs. Larson in which she understood that the whole amount of the Larson stock was being tied up, I had

(Testimony of Robert M. Hardy.)

in mind when I said "the whole amount of Larson stock" the 210,900 shares, which were being tied up, so that we couldn't sell them for four months; we were actually optioning and selling 80,000 shares.

Thereupon, there was offered and received in evidence without objection a copy of the last will and testament of A. E. Larson, which was marked Respondent's Exhibit D.

(A photostatic copy is attached hereto and made a part hereof.)

(Witness continuing):

I have seen this will. I was familiar, after Mr. Larson's death, with paragraph 17 of the will which states: "The executor of my estate shall have three years if necessary to liquidate enough property to pay all of the above bequests."

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Thereupon,

NAT U. BROWN,

a witness on behalf of the taxpayer, was duly sworn and testified as follows:

Direct Examination

(By Mr. Jones):

I am an attorney-at-law and practice at Yakima, Washington. I have been there 18 years. My firm name is Rigg, Brown and Halvorsen. My firm was an attorney for the executor for the Larson Estate.

(Testimony of Nat U. Brown.)

I personally handled most of the legal matters connected with the Larson Estate.

Thereupon, there was offered and received in evidence without objection a document referred to as a petition and order bearing date of July 31, 1934, in which the authorization to sell 10,000 shares of Sunshine Mining Company stock [84] was increased to 15,000 shares, which document was marked "Petitioner's Exhibit 3" (Petition) and "Petitioner's Exhibit 4" (Order).

Thereupon, there was offered and received in evidence without objection a petition of the Larson Estate verified May 1, 1935, for partial distribution, and an order dated May 1, 1935, which were marked "Petitioner's Exhibit 5" and "Petitioner's Exhibit 6", respectively. (Photostatic copies of Petitioner's Exhibits 3, 4, 5 and 6 are attached hereto and made a part hereof.)

I prepared and presented the petition of July 26, 1934, for the sale of 10,000 shares and the option of 70,000 shares of Sunshine Mining Company (Respondent's Exhibits B and C, respectively), followed by the petition of July 31, 1934 and the order of the same date increasing that from authority to sell 10,000 to 15,000 (Petitioner's Exhibits 3 and 4, respectively).

I prepared the first petition and order at the request of Mr. Hardy and the bank; and the second petition and order were prepared at the request of

(Testimony of Nat U. Brown.)

Mr. Parker, who was working for the bank then, and Mr. Stolle.

There was no consideration given in connection with those applications to the matter of whose stock was being sold as between Mrs. Larson's interest and the Estate's interest. I had no discussion with Mrs. Larson that any part of her interests were being sold. I had no discussion with Mr. Parker to any such effect.

I understood the purpose and justification for selling the stock was to pay the specific bequests. That is the recitation in the petition and that language was advisely used.

The purpose of selling it, was to pay specific bequests—that is what I had in mind. I dictated the language of the petition. I presented the matter [85] to the Court Commissioner, and got the order. In presenting a petition, our Court Commissioner requires you to prove your petition. You just take it and prove each paragraph or offer evidence on each paragraph of the petition. Evidence was offered on the paragraph of the petition which recites that it was for the purpose of paying the legacies of the decedent. This was prior to the inventory of the Estate. There had been no inventory filed yet; and, of course, there had been no appraisal of any part of the Estate yet. The Estate was known to be solvent. I don't know how much the claims amounted to; I know they were in the



(Testimony of Nat U. Brown.)

neighborhood of \$100,000. We figured the value of the Estate at about a million and a half.

“Q. Did you subsequently file a petition and get an order which made any segregation or application of the stock that was sold as between Mrs. Larson’s interest and the Estate?

A. This is from memory. Sometime later,—I don’t know how long after that,—Mrs. Larson wanted some stock to give to her son, as I recall it.

I presented the petition asking for the distribution to her of either 10,000 or 15,000 shares of her remaining 105,000 shares that belonged to her in the estate.”

(Witness continuing):

Petitioner’s Exhibits 5 and 6 are relative to the transaction just described; the petition is for the distribution to her as residuary legatee. I say that they have bearing on the allocation of the stock that was sold because “at the final report of your petitioner’s executor herein on file and such final report, together with the inventory shows that included within the estate herein was the total of 210,974 shares of capital stock of the Sunshine Mining Company, a corporation, of which a total of 85,000 shares have been sold, leaving in the possession of the executor, your petitioner herein, the bank and petitioner, shares to the number of 125,974, of which said shares Rose B. Larson [86] as surviving spouse is the owner of 105,487. That was on the first day of May, 1935.”



(Testimony of Nat U. Brown.)

The petition was drawn in that language on the basis of the community property she was entitled to have distributed to her one-half of these shares of stock, or 105,000 as set out. (Motion to strike the last statement as being a conclusion was overruled.)

At the time these petitions were being presented, I considered what right, if any, it (the executor) had to sell the property of the estate. I am sure that I advised our clients as to that point in connection with presenting these petitions.

I don't recall what our conclusion and advice were as to the extent to which they might sell the property of the estate—whether for the payment of legacies or debts, or whatnot. Each specific thing was gone into. Mr. Larson's one-half of the estate could be sold to pay the specific bequests, and that the whole community estate, if necessary, could be sold to pay the debts and the cost of administration. There was no change in the five days between July 26 and July 31, in the needs of the Estate to pay debts that had any effect, or caused the increase in the sale from 10,000 to 15,000 shares.

The reasons for the second sale were not any different from the reasons for the first sale, except that Mr. Stolle's principals wanted to buy outright 5,000 shares more than they did the few days before,—that was all. I was just generally familiar with the income and current assets of the Larson Estate. I did not handle any of that, but just generally. You see, this was not a non-intervention will, so we had

(Testimony of Nat U. Brown.)

to handle the leases and get orders on practically everything that was done.

No consideration was given as to any necessity of selling any of the assets of the Estate to pay debts.

[87]

“Q. In obtaining this order for the sale of stock, did you have any intent as to what stock was being sold, as to whether it was,—affected Mrs. Larson’s interests as distinguished from the interests of the decedent?

Mr. Neblett: I object to that, Your Honor.

The Court: I will sustain that objection unless it is communicated to the parties instant.

Mr. Jones: The respondent in his notice of deficiency here has said that he is assessed a deficiency, and because the sale was made by reason of the orders,—I think that was the language,—show that Mrs. Larson agreed through Mr. Parker to the sale of her interest in the stock. Now, Mr. Brown was acting on behalf of the executors of the estate and it seems to me that this question gets down pretty much to a matter of intent.

The Mildred Hubbard case which arose in this jurisdiction and was decided by the Board,—I think in the 30 B. T. A., presented a similar question except that it was a non-intervention will. They had a lot of stock in the Boeing Airplane Company and during the administration, the executrix who was the widow, sold a lot of the stock. She showed in the proceeding that she intended to sell the estate’s in-

(Testimony of Nat U. Brown.)

terest, and not her own. It seems to me that the matter of the intent of the person that handled it, particularly as here, it was shown as Mrs. Larson said, 'I will leave that to Shirley,' and Shirley was working for the executor.

It seems to me that this is pertinent.

The Court: If I follow you correctly, in your citation of the case in question, it seems to me that the executor would be the one to entertain the intent. I don't know;—of course, I realize the fact that the executor was a corporation, some human being has to act for it.

Mr. Jones: Yes; the executor is a corporation. Mr. Hardy said they were simply tying up this stock, and he left that to Mr. Brown. That was his testimony just a few minutes ago. It seems to me that this is a material and suggestive thing. It ties in, as I say, with the Hubbard case. The matter of intent is a material element in a case of this kind.

Mr. Neblett: I would like to state on that point that this intent,—these decrees—don't mention any intent at all.

Now, if Mr. Brown had had that intent, it seems to me that that intent would have been expressed in that decree.

Now, he is here by oral testimony trying to vary the terms of a decree and petition that he drew, stating what his intent was. Now, it is probable, and the chances are that if he had had that intent,

(Testimony of Nat U. Brown.)

and they were selling the Estate's interest only, that that statement would have been made in the Petition itself, and the Court order would have confirmed it. [88]

The Court: Well, it strikes me that the question here is whether this witness could exercise intent on behalf of the executor. The executor is the one that must have intent, as I understand your Hubbard case. The executor, of course, was the bank, and I assume that the representatives of the Bank,—that is, the proper officials of the bank,—would perhaps have to exercise the intent on behalf of the executor. Whether the attorney for the executor could do that, or not, is the question in my mind.

Mr. Jones: Under the testimony here, as I say, that Mr. Hardy said Mr. Hoffman handled the details and he, Mr. Hardy, didn't consider the matter as to whose stock was being sold; he didn't pay any attention to that.

I do think the basis upon which Mr. Brown submitted the matter is material. After all, I think in order to bind Mrs. Larson both in the tax case and in the probate matter, you would have to show that she intended that her interest in the stock should be sold; and I want to disprove that. I appreciate that it is getting close to the question of a line, but I submit—

The Court: (Continuing) What difference would it make if the executor had the intent or not, if he had no right to sell it?

(Testimony of Nat U. Brown.)

Mr. Jones: Well, the main reason that I put it in there was because of this statement in respondent's 90-day letter:

'It is further noted that you contend the stock sold was singled out from one-half of the estate for the payment of bequests. The records indicate the Court considered this to be a sale of community property, and your approval through the agent was obtained before the sale was authorized.'

Now, if Mr. Brown in submitting this matter didn't intend to get any authority to sell the stock of Mrs. Larson, obviously that statement is not supported.

The Court: I think you had better confine it to what was actually done, and what was presented to the Court.

I don't believe that this witness as attorney for the executor could really advise anybody by his intent unless that intent was expressed in this matter presented to the Court, and probably in such a way as to bind Mrs. Larson,—rather, unless she had agreed to it, or it was understood by her and she understood her rights, or what was being done with reference to the community property, if anything.

Mr. Neblett: Right on that point, Mr. Hardy has testified over and over again,—he is the one (indicating witness) if the intent is admissible, to be the one to testify concerning it. He has testified



(Testimony of Nat U. Brown.)

that 40% of the shares were being sold. That simply means broken down to plain language that the intent was to sell the community stock, as I see it.

Now, this witness certainly cannot take the stand and testify to a contrary intent. I mean the attorney. He is supposed to carry out the intent of his [89] client, and not a contrary intent.

Now, the evidence shows that the balance of the stock was tied up. It shows that the whole community estate was involved in the transaction.

The Court: Well, I believe that I will reconsider that ruling and overrule the objection and let it go in.

Q. (Mr. Jones, continuing) I will ask you, Mr. Brown, what was your,—if you had any intent in submitting these petitions and orders?

A. Yes.

Q. As to whose stock was being sold?

A. Yes.

Q. What was that intent?

A. To sell Mr. Larson's stock. I felt that we didn't have any right to sell Mrs. Larson's half of the community to pay these bequests. As a matter of fact, I discussed that with Mr. Parker at some time or other in connection with this because I advised him that there would be 105,000 shares left to be distributed to his mother even though all of the stock was sold."



(Testimony of Nat U. Brown.)

(Witness continuing):

We did not consider whether there was any necessity of selling the stock, or any other assets to pay debts of the estate. I didn't feel that there was any necessity of selling any other property to pay debts. I don't think the question as to the necessity of making any sale of assets of the estate to pay its debts was discussed or talked over. There were two things,—the big things were the legacies and the estate tax. So far as I know, Mrs. Larson did not exercise any control or direction over the business matters of the estate.

I prepared the final account of the executors and followed that by a supplemental account.

Thereupon, there was offered and received in evidence without objection the inventory and appraisal of the estate, which was marked Petitioner's Exhibit No. 7.

There was also offered and received in evidence without objection the final report of the executor in the petition for distribution, containing report of operating expenses and of all the assets except details as to the Larson Building, which [90] was marked Petitioner's Exhibit No. 8.

There was also offered and received in evidence without objection a copy of the supplemental report, which was marked Petitioner's Exhibit No. 9.

(Photostatic copies of Petitioner's Exhibits, Nos. 7, 8, and 9, are attached hereto and made a part hereof.)

(Testimony of Nat U. Brown.)

(Witness continuing):

I didn't prepare the financial statement. Mr. Hoffman prepared that, but I prepared the legal part, submitting it. The compilation and the lists and disbursements were handed to me by Mr. Hoffman, and attached as a part of the exhibit.

"Mr. Jones: Petitioners' Exhibits 8 and 9 with reference to the facts set out and the date of the proceedings.

Mr. Neblett: We accept your statement as being true.

Mr. Jones: Does the same thing apply to the details of the financial transaction set out as Exhibits 3 and 4?

Mr. Neblett: In so far as we know, they are all right. We will ask that they go subject to check.

Mr. Jones: Unless you advise to the contrary, then, it may be assumed that the recitals contained in those reports are true and correct?

Mr. Neblett: Yes.

Mr. Jones: All right. That is all.

The Court: Cross examine." [91]

### Cross Examination

(By Mr. Neblett):

I acted upon the instructions of Mr. Hardy and Mr. Parker in drawing the petition for distribution I submitted to the Court in the Larson Estate. Mr. Hardy and Mr. Parker were both there at the time the information was given to me. Mr. Parker is

(Testimony of Nat U. Brown.)

Mrs. Larson's son, who is the step-son of Mr. Larson and who was employed by the bank shortly after its qualification to assist in the administration of this estate. I understood Mr. Parker was representing his mother, Rose B. Larson.

We felt that we ought to consult her because she was the residuary legatee. Apparently, both she and Mr. Parker were anxious that the estate's administration should be closed as soon as possible, don't you see; so that is it. He was consulted very often in connection with that.

We had conferences in connection with these petitions with both Mr. Hardy and Mr. Parker. I knew at the time of the attempt to list the Sunshine Mining Company stock on the New York Curb Exchange, well, along in June, just at the time Mr. Stolle, after Mr. Hardy had been elected president of the mine and qualified; it was along about June 23 or 24 when I first heard. We drew the option agreements in respect to the stock of the estate. We knew those agreements contained the limitation on all of the stock of the community estate. After Mr. Larson was deceased on June 17, 1934, I had occasion to read the will. We knew of the provision in Mr. Larson's will in paragraph 17, which provided: "The executor of my estate shall have three years if necessary to liquidate enough profits to pay all of the above bequests", and we discussed that very often and at various times. [92]

(Testimony of Nat U. Brown.)

(By Mr. Neblett):

“Q. In other words, Mr. Brown, as far as the bequests were concerned, you didn’t have to sell the stock at all, is that right, under the will?

A. I don’t think that is right.

Q. Well, the will says you had three years to sell the stock or to pay the bequests?

A. If we hadn’t optioned this stock, we never would have gotten over \$2.00 a share for it.

Q. Exactly. In other words, in listing the stock on the New York Exchange, the stock retained enhanced in value to the stockholders?

A. Not only that, but the stock that was sold was sold for a great deal more than it could have been sold for in any other way. One half of the stock, unless it had then been sold, would not have paid the bequests. We would even have had to get into the real estate to do it.”

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Thereupon,

FRANK H. CHURCH,

a witness for the taxpayer was sworn and testified as follows:

Direct Examination

(By Mr. Jones):

I am a Public Accountant, and carry on my business at Yakima, Washington. I have handled most of the accounting work and income tax work of the

(Testimony of Frank H. Church.)

Larson Estate and Rose B. Larson (petitioners here), since early in the year 1935. I prepared the 1934 returns. Mrs. Larson was on the cash basis. I also prepared the return for the A. E. Larson Estate. For the period June 8, 1934, after Mr. Larson's death, to December 31, 1934, efforts were made to include all of the income and by an inadvertence, all of the income applicable to the community estate as well as income and expenses were included in the one return. The income tax return shows a net income for the Estate for the period June 8, 1934 to December 31, 1934 of \$54,693.09. [93]

Thereupon, there was offered in evidence the original notice of deficiency (90-day letter) from the Commissioner of Internal Revenue, dated May 16, 1940, addressed to the Estate of A. E. Larson, proposing a deficiency of \$143,000-odd, which was marked Petitioner's Exhibit No. 10. (A photostatic copy is attached hereto and made a part hereof.)

(It was thereupon stipulated that an appeal has been taken from the notice of deficiency (Pet. Ex. 10), and that the Docket Number of that appeal is 104214.)

(Witness continuing):

In the return for the Estate of A. E. Larson for the period from June 7, 1934 to December 31, 1934, I included interest received from community property obligations. The Item "B" in the petition of interest of \$2,374.68 represents half of the interest



(Testimony of Frank H. Church.)

that was included in the return for the Estate for that period. Item "C" in the petition of rentals of \$9,782.49 represents half of the rentals from the community property, the total of which was included in the Estate return for the period June 7, 1934 to December 31, 1934; although some adjustments have been made which are not now in question.

"Q. (Mr. Jones continuing): Now, referring to item 'E', dividends of \$33,453.64, I will ask you whether those dividends were included by you in the dividends reported by you for the Estate in its income tax return for that period?

A. I think the amount that you referred to includes \$1,570 or \$1,800 in addition to one-half of the community.

Q. Well, it includes an adjustment, does it not?

A. Yes.

Q. For one-half of \$3,600, Surety Finance dividends? A. That is right.

Q. And one-half of \$3,140 Surety Finance?

A. That is right. [94]

Q. But that is one-half of the community property included in the Estate's return, is that right?

A. That is right.

Mr. Jones: That is correct, Mr. Neblett?

Mr. Neblett: That is correct, except that we have an alternative issue on that, Mr. Jones.

Mr. Jones: Yes, I know you have. I know that you have asserted that.



(Testimony of Frank H. Church.)

Mr. Neblett: Yes. The figure of \$1,570 down there. As I understand it, Mr. Jones,—take your assignments of error, ‘E’ and ‘H’, they are combined together.

Mr. Jones: Yes.

Mr. Neblett: Which totals up \$35,023.64, isn’t that right?

Mr. Jones: Well, I can’t tell you exactly the figures, but they do enter into the same computation.

Mr. Neblett: Exactly. That is ‘E’ and ‘H’ in the amended petition.

Mr. Jones: I have no doubt that we can adjust all of those under Rule 50, but I wanted the record to show.

Mr. Neblett: Let the record show that we are referring to Paragraph 5 E and H of the amended petition.

That is right, is it not?

Mr. Jones: Yes, we are referring to paragraphs E and H of 5 of the amended petition.

Q. (Mr. Jones, continuing) Now, this \$1,570 that is included in Item H, dividends on Surety Finance Company, did you include that in the Petitioners’ return for the period from January 1 to June 7? A. I included one-half of the \$3,140.

Q. Just a minute. She made a return for the full year.

You included the one-half of the \$3,140 dividends on Surety Finance Company stock accrued to the date of Mr. Larson’s death in the income tax return of the petitioner, Mrs. Rose B. Larson, didn’t you?

(Testimony of Frank H. Church.)

A. Yes, I did.

Q. It doesn't make any difference in the amount. It makes a difference if it should be held that it is includable in the Estate's return rather than her return? A. Yes, that is right. [95]

Mr. Jones: That is the only difference. Well, I think that is all."

Cross Examination

(By Mr. Neblett)

(Not material to assignments of error.)

Redirect Examination

(By Mr. Jones)

Thereupon, there was offered and received in evidence without objection a document referred to a Sunshine Mining Company resolution which was marked Petitioner's Exhibit No. 11.

(A photostatic copy of said exhibit is attached hereto and made a part hereof.)

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Thereupon,

SHIRLEY D. PARKER,

a witness for the taxpayer, was duly sworn and testified as follows:

Direct Examination

(By Mr. Jones):

Mrs. Larson is my mother. I got up to Yakima about the next day after Mr. Larson's death on

(Testimony of Shirley D. Parker.)

June 7, 1934. I had not been there for a great many years. I took mother on a trip for her health and then came back in a few months. The first time we got back was the latter part of July 1934. From that time on, I had a part in the administration of the Larson Estate by the Yakima Bank; my mother arranged with Mr. Hardy, the president of the bank, which was the executor of the Estate, to employ me at the bank throughout the period of the executorship. [96]

My mother attended to very few of the business affairs herself, if any. I acted for her after Mr. Larson's death.

I have heard Mr. Hardy's testimony that there was some discussion with me about the optioning and sale of the Sunshine Mining Company's stock; there was some discussion about it after we got up here from California.

There was some discussion that mother's stock could not be interfered with or sold for Mr. Larson's debts or bequests. The discussion was among the attorneys, Mr. Hardy and Mr. Brown and his associate.

There was nothing done in 1934 in the way of approving or consenting to any sale by my mother of her interest in the community "Sunshine stock". The only time we ever petitioned specifically for mother to sell some stock for her was after some had been distributed out of the Estate under the

(Testimony of Shirley D. Parker.)

auspices of the Court so that mother could sell her own stock.

Cross Examination

(By Mr. Neblett):

I was not aware of the plan to distribute the stock on the New York Stock Exchange until after I got up here from California, the latter part of August, and the options were signed on June 30, 1934. That was the first time I learned about it. I hadn't heard any discussion about listing the stock on the New York Curb Stock Exchange prior to Mr. Larson's death. Prior to Mr. Larson's death, I was at Los Angeles, California. I had been there for about 25 years.

I knew several months after the option agreements had been entered into that they contained a limitation of the sale of any more stock of the Larson Community Estate. I don't know anything about the discussions had between the various stockholders in order to get the stock listed on the New York Curb. [97]

After Mr. Larson's death, I came back the last of July 1934, and then took my mother on a trip that winter, about Christmas time; and was gone several months, and got back again I think about the first of March, 1935. I don't think I got back from California as early as July 5, 1934, because I was gone over 30 days, I think, and didn't leave until between the 12th and the 14th of June, 1934. I read over Mr. Larson's will after his death. There

(Testimony of Shirley D. Parker.)

was a phrase in the will to the effect that they had at least three years to sell stock to pay bequests. I am familiar with the appointment of an administrator de bonis non with the will annexed in the Estate of A. E. Larson. I am the administrator de bonis non.

(Mr. Jones): I might say, so that your Honor will know what we are talking about, that in May of 1935 the Bank filed a final account and petition for discharge and the Estate having been practically administered, except for the payment of some legacies and the settlement of some taxes, the bank was relieved and there were reserved 15,000 shares of Sunshine Mining Company stock, together with some \$45,000 cash. The bank was discharged, and Mr. Parker was appointed administrator de bonis non to settle the unpaid bequests, and hold the cash and settle the taxes.

Thereupon, the individual income tax return of Mrs. Rose B. Larson for the year 1934 was offered and received in evidence and marked Petitioner's Exhibit No. 12.

(A photostatic copy is attached hereto and made a part hereof.)

(Petitioner-taxpayer rested.) [98]



Thereupon,

CARL M. STOLLE,

a witness for the Commissioner of Internal Revenue, was duly sworn and testified as follows:

Direct Examination

(By Mr. Neblett):

In 1934 I secured from the Estate of A. E. Larson options calling for the purchase of Sunshine Mining Company stock. My recollection is that it was 70,000 shares under option; and a so-called agreement of purchase in the amount of 10,000 shares, which later became 15,000 shares. I had options with other purchasers than the Larson Estate.

"Mr. Jones: May this testimony be understood to be under the same objection to the testimony as was submitted to Mr. Hardy's?

The Court: Yes."

(Witness continuing):

Some of the holders of stock I talked to were Alec Miller, J. B. Cox and Mrs. Hull. I attempted to secure the options and shares because it came to my attention that Mr. Walter Seligman, of J. W. Seligman Company of New York City, was an owner of a substantial amount of stock. Through correspondence with him, it was developed that he would be very desirous of seeing the stock listed on the New York Curb, or at least at that time listing privileges obtained for trading in the stock on the New York Stock Exchange. It was in furtherance of that program that I endeavored to obtain options from the



(Testimony of Carl M. Stolle.)

larger stockholders of Sunshine Mining Company stock.

My activities up to the time of the death of Mr. A. E. Larson on June 7, 1934 were: Following the correspondence mentioned heretofore, I visited Yakima, Washington, and Kellogg, Idaho, a number of times, discussing this matter with Director L. H. Dills, Alec Miller, Mr. Carroll, Mr. J. B. Cox, and on one occasion, Mr. A. E. Larson. The only discussion I had with Mr. Larson [99] prior to his death relative to listing the stock on the New York Stock Exchange occurred, I believe, in the latter part of April or early in May. The exact date is not now clearly in my memory, but it was along about that time; and his distinct feeling was that he was against such a proposal. These four larger stockholders were to give the options in the first instance; they were Mr. A. E. Larson, Mr. J. B. Cox, Mr. Alec Miller, and Mrs. N. P. Hull, the widow of Mr. N. P. Hull who was originally one of the largest stockholders.

I had a conference with Mr. Hardy, Mr. Miller, Mr. Cox and Mr. Hull relative to acquiring options on their stock, and it was following Mr. Larson's death that I had my first consultation with Mr. Hardy.

Prior to my meeting with Mr. Hardy, as I have stated here before, a number of conversations with Mr. Miller and Mr. I. H. Dills, principally, and

(Testimony of Carl M. Stolle.)

Mr. Cox, but due to the fact that I was not able at that time to gain the consent or help of Mr. A. E. Larson, actual figures were not discussed; actual figures of the amount of options which I would require were not discussed until Mr. Hardy came into the picture following the death of Mr. Larson. After one or two, or perhaps on a third visit to Yakima following Mr. Larson's death, I made real progress with Mr. Hardy in selling the idea that it was a desirable thing. At that time I had, of course, in my own mind, formulated and then discussed with these gentlemen, the four mentioned heretofore, specific amounts. Now, while at the time I had no exact figure of percentage in mind,—my outline of the amount—, the total required figured approximately 40% of the various total holdings of these four enumerated.

I knew the total holdings of the Larson Estate; my best recollection is that I considered it to be 210,000 shares. It was my purpose to get 40% of [100] 210,000 shares. It was also my purpose to get 40%, or approximately that, of Mr. Hull's entire holdings, of Mr. Cox's entire holdings, and of Mr. Miller's entire holdings. I succeeded in getting approximately 40% of these gentlemen's entire holdings. The reason advanced as to why these large stockholders should give me 40% of their holdings was, briefly, because a company of that size and importance required for the benefit of their stockholders a much better and broader market than at

(Testimony of Carl M. Stolle.)

that time existed. The stock, I believe, was traded in,—so-called—traded over the counter in Seattle, and was listed in Spokane; but the total amount of trading in those centers obviously was very limited.

It was further suggested that through such an operation—that is, broadening of the market, making the stock that was then not very negotiable—a readily salable item,—would enhance its value. It would enhance the value of the Sunshine Mining Company stock. I said something to these stockholders relative to any enhancement in value of the stock remaining in their various possession. As a matter of fact, the specific statement, as I recall it, was to the effect that—as an example—if a person owned 10,000 shares, and gave us an option on 4,000 shares, that the result of the operation in its entirety would mean that the remaining 6,000 shares would equal in market value the then current market value for the entire 10,000 shares in addition, of course, to which they would have the cash consideration for the 4,000 shares under option. This illustration that I have just given you, was used in connection with the acquisition of these options from these four large stockholders.

These options that I acquired were later written up. I heard the testimony regarding them here today. I was familiar with the fact that each of these options contained the name of a specific certificate. [101] The options were drawn under my

(Testimony of Carl M. Stolle.)

direction. These same specified certificates were later acquired when the options were exercised.

### Cross Examination

(By Mr. Jones):

I never talked to Mrs. Larson about any sale of her stock. I talked to Mr. Parker. In talking with Mr. Parker, I did not distinguish between the sale of any interest of Mrs. Larson and the sale of any interest of the decedent in the stock; I do not believe so.

I wanted to tie up a certain number of shares. I just didn't start out saying, "I want such and such a percentage of such and such stockholders". I wanted a certain amount of shares, and it just happened to work out at 40% of the total of the options. I had no specific percentage figure in mind, but I did have a memorandum showing the number of shares held by the four people mentioned. Of that amount, it happened to figure out somewhere between  $\frac{1}{3}$  and 40% of each of those holdings, the amounts I wanted as a minimum requirement. It was first figured I wanted 80,000 shares from the Larson interests, and ultimately it was increased to 85,000 shares. It didn't make any difference to me whether it came out of Mr. or Mrs. Larson's half. I didn't make any attempt to distinguish it.

Thereupon,

CARROLL M. HULL,

a witness for the Commissioner of Internal Revenue, was duly sworn and testified as follows:

Direct Examination

(By Mr. Neblett):

I was acquainted with the officers of the Sunshine Mining Company in [102] Yakima in June, 1934; I was a director at that time. I knew Mr. Hardy, Mr. Cox, Mr. Stolle and Mr. Miller. Mother and I were interested in Sunshine Mining Company stock. At that time, my mother had 58,000 and I believe it was 58,176—I am not sure of the small numbers,—but it was 58,000 and something. I had just a few shares at that time,—very few. It was just my mother's stock that was approached relative to the option. I had a conference representing my mother with Mr. Miller, Mr. Hardy, and Mr. Cox relative to the options of the stock of the larger stockholders.

At the first conference, when this was instigated, I was in the East at the time. I was notified by telegram of Mr. Larson's death, and I got here as soon as I could get here. I got here about the middle or tenth, I think, of July. And I talked to the various ones,—Mr. Hardy and Mr. Miller, and to Mr. Stolle.

“Mr. Jones: I meant to suggest,—I assume this testimony is also subject to my objection?



(Testimony of Carroll M. Hull.)

The Court: Yes, it may be subject to the same ruling.

Mr. Jones: And exception."

Substantially the same things that have been testified to here were said about the optioning so many shares of my mother's stock,—that our remaining stock would be worth substantially as much as the whole amount was before, and it was necessary for these people to have about that amount of stock and that the deal was subject,—that we all go in on it.

We sold 10,000 shares of mother's outright and optioned 22,000 shares. We sold 10% and then optioned approximately 40%; I think the amount optioned was about 38%. [103]

I don't think we would have optioned our stock if the other stockholders had not optioned theirs.

#### Cross Examination

(By Mr. Jones):

I didn't have any talk with my mother about these options. I did not have any talk with Mr. Parker about them. I did not know anything about whether his share or interest was being sold or intended to be sold as far as the Larson estate goes.



Thereupon,

SHIRLEY D. PARKER,

was recalled as a witness for the Commissioner of Internal Revenue, and testified as follows:

Direct Examination

(By Mr. Neblett):

I am familiar with the suit in the matter of the Estate of A. E. Larson, deceased, and Shirley D. Parker, administrator de bonis with the will annexed of the Estate of A. E. Larson, deceased, and others, against R. M. Hardy, Docket No. 8561.

"Now, in bringing that suit, Mr. Parker, did you or did you not act as the agent of your mother, Rose B. Larson?

Mr. Jones: I object to that as calling simply for a conclusion. It is calling for his conclusion.

Mr. Neblett: We think that it is a proper question, your Honor.

Mr. Jones: The record shows who he acted for, and shows in detail in whose behalf the suit was brought. [104]

\* \* \* \* \*

The Court: You may answer the question.

A. Well, I brought that before the Superior Court of the State of Washington to help probate an estate. It hadn't been finished probating yet by the bank.

Q. (By Mr. Neblett): In bringing that suit, weren't you acting for and on behalf of your mother, Rose B. Larson?

(Testimony of Shirley D. Parker.)

A. Not any more than I was for any other taxpayers that have rights to be adjudicated. The estate hadn't been probated yet. It hadn't been finished. I am administrator de bonis non there.

Q. I understand that.                      A. Yes.

Q. But didn't you talk to your mother prior to the bringing of this suit?

A. Yes, I have talked to my mother many times.

Q. Relative to this petition that you filed?

A. Yes, I have discussed that.

Q. Didn't she acquiesce in your bringing it?

A. No, she objected to my bringing it.

Q. She objected to your bringing it?

A. Yes, she didn't like it, and I said there were some matters that ought to be straightened out in there, and we ought to bring it.

Q. Whom were you representing then, in your opinion?

A. I was representing our own interests and the taxpayers of the County.

Mr. Neblett: Just a minute, your Honor. I think that I can straighten this out.

If your Honor please, if you will just bear with me a second, I think that I can find this.

The Court: All right.

Q. (By Mr. Neblett): Mr. Parker, I ask you if in the matter of A. E. Larson, deceased, and also Shirley D. Parker, administrator, No. 28930, you gave a deposition, the deposition of Shirley D. Parker, taken September 29, 1936, before Fred

(Testimony of Shirley D. Parker.)

Velikanje, Notary Public, Yakima County, Washington.

Do you recall giving a deposition at that time?

[105]

A. Well, I don't recall the exact date. I will recall it probably if I see it.

Q. All right. Let me refresh your recollection here now.

\* \* \* \* \*

Q. (Mr. Neblett) Did you further testify in this deposition as follows:

‘Q. In other words, he thought the stock would raise so that the balance of the stock would be worth as much as all the stock before it was listed?

A. Yes. Thought when they got it on the market, Seligman would put the stock up so the balance would be worth practically the same as it was before it was listed.

Q. Tell you anything else? Tell you about the reason of the 10,000 and 70,000?

A. Well, he said, “We will get this money on hand and pay off these legacies.”

Q. And is that all he told you?

A. Well, practically all, details about those points.

Q. Did he tell you how much stock Seligman said he had to have?

A. Yes, he told me that 40% of the Larson estate, 40% of the Miller holdings, 40% of the

(Testimony of Shirley D. Parker.)

Cox holdings, and 40% of the Hull holdings, were necessary.

Q. Necessary for whom?

A. Seligman and Company, before they would list the stock.

Q. Whom did he tell you had told him that; where did he get his information about that?

A. Well, I don't know; I presume from Grande-Stolle.

Q. Let's see, the Larson estate had 210,974 shares, approximately 211,000?

A. Yes.

Q. When did he tell you about the 40% stuff, prior to the time you went before Judge Milroy the first time?

A. I think so, yes.

Q. Let's see, 40% of 210,974 would be 84,389 shares, and you were only optioning and listing 80,000—10,000 selling and 70,000 optioning. Did he say it would be 40% or approximately 40%?

A. Probably said approximately 40%, but he also elaborated on the fact that Mr. Miller and the others put up a bigger percentage of their holdings than the Larson estate. He said, "See, I've given you a good deal". His idea all the time was on selling me what a good deal he made for the Larson estate.'

This is the deposition of Shirley D. Parker, taken in the matter of the Estate of A. E. Larson.

(Testimony of Shirley D. Parker.)

Now, do you remember testifying like that, Mr. Parker? [106]

Mr. Jones: I object to that as irrelevant and immaterial, and not proper cross examination, if that is what it is supposed to be.

The Court: This is his own witness now.

Mr. Neblett: That is right.

Mr. Jones: Then, if he makes him his own witness,—it isn't tied up. If he is just moving the complaint over here, what he has read there hasn't any relation to the complaint.

The Court: The only relation I can see is whether it might be contradictory to something which has been given before. Of course, being his own witness, he can't impeach him, but he is in somewhat the nature of an adverse witness here.

I will ask him if he so testified?

The Witness: I so testified. It sounds like it is.

The Court: Now, I think that is about as far as you can go with this deposition.

Mr. Neblett: All right, your Honor.

The Court: And this offer to introduce the records and the case of the Estate of A. E. Larson against Hardy, is it,—or the executor?

Mr. Jones: Against Hardy and the——

The Court: Interposing) It is entirely too tenuous in the matter of any involving of the petitioner in the present tax case.

Mr. Neblett: Yes. If your Honor please, I would like to refer to the fact, too, that the findings of

(Testimony of Shirley D. Parker.)

fact of this whole suit, the petitioner's which I was trying to introduce here, is referred to in A. E. Larson, No. 27481, Superior Court of Washington, August 25, 1939; 93 Pac. 2, (431). That is the case which includes the findings of fact based on this petition.

The Court: Well, does it make any finding as to whether it is community property sold or not?

The Witness: No.

Mr. Neblett: No, your Honor.

The Court: I will sustain the objection.

Mr. Neblett: Could we have this complaint marked for identification as an offer of proof? [107]

The Court: You may have it marked for identification and offer it, and the offer will be denied and the exception allowed.

What will be the number?

The Clerk: Marked for identification as Respondent's Exhibit 'E'.

(Document referred to, (M. F. I.) Petition and Complaint, was marked for identification as Respondent's Exhibit E.)"

(Witness excused.)

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Thereupon, there was offered in evidence a copy of a Petition for Appointment of Administrator de bonis non with the will annexed. Objection to materiality of the document was overruled, and the



said document was admitted and marked Respondent's Exhibit "F".

(A photostatic copy is attached hereto and made a part hereof.)

With permission and without objection, taxpayer offered and there were received in evidence a copy of Petition for Family Allowance filed June 14, 1934, and order authorizing it, which documents were marked as Petitioner's Exhibit No. 13. (A photostatic copy of each is attached hereto and made a part hereof.)

"Mr. Neblett: May I ask the purpose in offering that?

Mr. Jones: Simply to tie up with the accounts that have been filed here which show that there was to be a payment to Mrs. Larson of a certain sum, and whether those payments made to her should be charged as income, and to that extent the allowance of \$5,000 and \$1,500 a month, that would be charged against Corpus and not income.

Now, the next thing, I sent you a list of claims, and I understood if you didn't advise me to the contrary, you would have no objection.

Mr. Neblett: Could I see the list of claims?

Mr. Jones: Yes, I have got it here. Here it is.

(Document handed to Mr. Neblett by Mr. Jones.) [108]

Mr. Neblett: Mr. Jones, don't all of these claims appear in the executor accounts?

Mr. Jones: They appear in the accounts, but they don't appear separately set forth. This is a copy of the claims on file.

Mr. Neblett: We have no objection, subject to check.

Mr. Jones: I have sent you a copy.

Mr. Neblett: I have a copy.

Mr. Jones: The next number, then, is 14?

The Clerk: 14.

The Court: Admitted.

(Document referred to, List of Claims, marked and received in evidence as Petitioner's Exhibit 14.)"

(A photostatic copy of Petitioner's Exhibit 14 is attached hereto and made a part hereof.)

"Mr. Jones: Is there any question but that the 85,000 shares referred to by the respondent in a deficiency letter is the same 85,000 shares that we have been considering here in the testimony?

Mr. Neblett: If your Honor please, I don't think there is any question at all about that. We have been proceeding on the theory that this 85,000 shares here is involved in this case.

Mr. Jones: I just want to be sure that that is the 85,000 shares that respondent refers to, so there won't be any presumption that there is another 85,000 shares not covered in the testimony.

Mr. Neblett: No, no; that is the 85,000 shares.

\* \* \*

(Both parties rested.) [109]

The foregoing is all of the material evidence ad-  
duced at the hearing before the Board of Tax Ap-  
peals, and the same is approved by the undersigned.

J. P. WENCHEL,

Chief Counsel, Bureau of In-  
ternal Revenue, Counsel for  
Petitioner on Review.

(Sgd) H. B. JONES,

Counsel for Respondent on  
Review.

The foregoing is all of the material evidence ad-  
duced at the hearing, and in order that the same  
may be preserved and made a part of the record,  
this Statement of Evidence is duly approved and  
settled this ..... day of ....., 1942.

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Member, U. S. Board of Tax  
Appeals.

CRM/csl

3/1942

[Endorsed]: Filed Apr. 28, 1942. [110]

**SURETY FINANCE COMPANY**

№ 20287

Yellow, Michigan - December 31, 1934

THREE HUNDRED DOLLARS

INJURED

**THE YAKIMA FIRST NATIONAL BANK**  
UNITED STATES DEPOSITORY  
**YAKIMA, WASHINGTON**

UNITED STATES DEPARTMENT OF JUSTICE

**YAKIMA, WASHINGTON**

**SURETY FINANCE COMPANY**

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1940-1941

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U. S. BOARD OF TAX APPEALS  
DIV. 2 BOOK 1 88813-4  
RECEIVED NOV 12 1940  
PMT 1

DIV. 2

888/3-4

NOV 12 1940

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a-3



PETITIONER'S EXHIBIT 2

Surety Finance Company

I, Maynard Cary, Assistant Secretary of the Surety Finance Company of Yakima, hereby certify that at a meeting of the Board of Trustees of said corporation duly held on the 19th day of December, 1934, at which a quorum was present, the following resolution was adopted:

“It was moved by Herbert A. Shaw, seconded by William B. Dudley, unanimously carried, that the regular 4% dividend be declared to all stock holders of record payable December 31, 1934.”

In Witness Whereof, I have hereunto set my name and affixed the corporate seal of the said Surety Finance Company of Yakima, this 11th day of September, 1940.

[Seal] M. CARY,  
Assistant Secretary.

State of Washington,  
County of Yakima—ss.

Subscribed and Sworn to before me this 11th day of September, 1940, by the above named Maynard Cary, known to me to be the Assistant Secretary of the Surety Finance Company of Yakima, a corporation.

[Seal] E. M. FISHER,  
Notary Public in and for the State of Washington,  
residing in Yakima. [114]



## PETITIONER'S EXHIBIT 3

In the Superior Court of the State of Washington,  
in and for Yakima County.

(In Probate)

Filed 2-27-35

No. 8561

In the Matter of the Estate of A. E. LARSON,  
Deceased.

PETITION TO SELL PERSONAL  
PROPERTY

Comes now the Yakima First National Bank, and respectfully shows to the court as follows, to-wit:

1.

That it is the duly appointed, qualified and acting executor of the above entitled estate.

2.

That no inventory has as yet been filed herein, but that included amongst the assets of said estate are 210,974 shares of stock of the Sunshine Mining Company.

3.

That on the 26th day of July, 1934, your petitioner was authorized to sell outright 10,000 shares of said Sunshine Mining stock at the rate of \$5.82½ a share to Grande, Stolle & Company, payment to be made at the rate of \$2.00 per share on the 1st day of September, 1934, and the balance on or before the 15th day of December, 1934. That the said Grande, Stolle & Company have now offered to

purchase outright for cash 15,000 shares of said stock to net a return of \$5.82½ per share to said estate, and your petitioner believes it for the best interest of said estate that said offer be accepted and that said additional 5000 shares be sold, in order that it will [115] have sufficient funds on hand to pay the costs of administration, the widow's allowance and the special bequests.

Wherefore, your petitioner prays for an order authorizing it to sell 15,000 shares of said Sunshine Mining stock to Grande, Stolle & Company, a corporation, on the basis of \$5.82½ per share.

RIGG, BROWN & HALVERSON,  
Attorneys for Petitioner.

State of Washington,  
County of Yakima—ss.

E. P. Hoffman, being first duly sworn, on oath deposes and says: That he is the trust officer of Yakima First National Bank, petitioner above named, and makes this verification for and on its behalf, being authorized so to do; that he has read the within and foregoing Petition to Sell Personal Property, knows the contents thereof and believes the same to be true.

E. P. HOFFMAN

Subscribed and sworn to before me this 31st day of July, 1934.

NAT U. BROWN,  
Notary Public in and for the State of Washington,  
residing at Yakima. [116]

## PETITIONER'S EXHIBIT 4

In the Superior Court of the State of Washington,  
in and for Yakima County.

No. 8561

In the Matter of the Estate of A. E. LARSON,  
Deceased.

ORDER AUTHORIZING SALE OF  
PERSONAL PROPERTY

This matter coming on to be heard upon the petition of the Yakima First National Bank, as executor, for authority to sell 15,000 shares of capital stock of the Sunshine Mining Company to Grande, Stolle & Company to net the estate \$5.821½ per share, the executor being represented by its counsel, Rigg Brown & Halverson, and Rose Larson, the surviving widow and residuary legatee, being represented by her agent, Shirley Parker, and the court having heard the evidence and being fully advised in the premises,

Now, Therefore, It Is Ordered that the executor be and it is hereby authorized to sell 15,000 shares of stock of the Sunshine Mining Company for the net price of \$5.821½ per share; and

It Is Further Ordered that this order shall supersede the order made on the 26th day of July, 1934, insofar as the sale of the 10,000 shares of stock were concerned, but shall have no effect upon the order permitting the executor to grant an option to said Grande, Stolle & Company for the sale of 70,000 additional shares.

Done this 31st day of July, 1934.

R. B. MILROY,  
Court Commissioner.

Filed 2-27-35. [117]

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PETITIONER'S EXHIBIT 5

In the Superior Court of the State of Washington,  
In and For Yakima County

No. 8561

In the Matter of the Estate  
of  
A. E. LARSON, Deceased.

PETITION FOR PARTIAL DISTRIBUTION  
OF ESTATE

Comes now Yakima First National Bank, executor above named, and petitioning the court for authority to make a partial distribution of the Estate herein, shows to the Court as follows, to-wit:

1.

That the final report of your petitioner as executor herein is on file and that such final report, together with the inventory shows that included within the estate herein was a total of 210,974 shares of capital stock of Sunshine Mining Company, a corporation, of which a total of 85,000 shares have been sold, leaving in the possession of the executor, your petitioner herein, shares to the number of

125,974 of which said shares Rose B. Larson, as surviving spouse is the owner of 105,487.

2.

That the said Rose B. Larson, as surviving spouse, desires to have distributed to her 15,000 shares of said stock and that your petitioner, therefore, prays for an order of the court permitting and authorizing it to distribute to the said Rose B. Larson forthwith, 15,000 shares of stock of Sunshine Mining Company.

RIGG, BROWN & HALVERSON,  
Attorneys for Petitioner. [118]

State of Washington,  
County of Yakima—ss.

E. P. Hoffman, being first duly sworn, on oath deposes and says: That he is the trust officer of Yakima First National Bank, petitioner above named, and makes this verification for and on its behalf, being authorized so to do; that he has read the within and foregoing Petition For Partial Distribution Of Estate, knows the contents thereof, and believes the same to be true.

E. P. HOFFMAN

Subscribed and sworn to before me this 1st day of May, 1935.

NAT U. BROWN,  
Notary Public in and for the state of Washington,  
residing at Yakima. [119]

PETITIONER'S EXHIBIT 6

In the Superior Court of the State of Washington,  
In and For Yakima County.

No. 8561

In the Matter of the Estate  
of

A. E. LARSON, Deceased.

ORDER PERMITTING AND AUTHORIZING  
PARTIAL DISTRIBUTION

This matter coming on to be heard upon the petition of Executor herein for authority to distribute to Rose B. Larson 15,000 shares of stock of the Sunshine Mining Company, and it appearing to the court that included within the assets of the above entitled estate was an aggregate of 210,974 shares of the capital stock of the Sunshine Mining Company and that all of said property was community property of the decedent and Rose B. Larson, his widow, and

It further appearing that said Rose B. Larson is entitled, as her share of the community property, to receive from said executor, upon the closing of said estate, a total of 105,487 shares, and no good reason appearing why a partial distribution should not at this time be made.

Now, Therefore, it is ordered that the Executor herein be and it is hereby authorized and directed to distribute to said Rose B. Larson 15,000 shares of the Sunshine Mining Company, a corporation.



Dated this 1st day of May, 1935.

R. B. MILROY,

Court Commissioner

[120]

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PETITIONER'S EXHIBIT 7

In the Superior Court of the State of Washington,

In and For Yakima County.

(In Probate)

No. 8561

In the Matter of the Estate

of

A. E. LARSON, Deceased.

INVENTORY AND APPRAISEMENT

I, Thomas Granger, County Clerk and ex-officio Clerk of said Superior Court, do hereby certify that Alex Miller, Geo. H. Bradshaw and Lloyd L. Wiehl were duly appointed appraisers of the above entitled estate, by order of said Superior Court duly entered on the 17th day of July, 1934.

Witness my hand and seal of said court this 22d day of November, 1934.

THOMAS GRANGER,

Clerk of Superior Court.

By E. M. POMEROY,

Deputy.

State of Washington,  
County of Yakima—ss.

Alex Miller, Geo. H. Bradshaw and Lloyd L. Wiehl, duly appointed appraisers of the above entitled estate, being duly sworn, each for himself says: I will truly, honestly and impartially appraise the property of said estate, which shall be exhibited to me, according to the best of my knowledge and ability.

ALEX MILLER  
GEO. H. BRADSHAW  
LLOYD L. WIEHL

Subscribed and sworn to before me this 22d day  
of November, 1934.

C. W. HALVERSON,  
Notary Public in and for the State of Washington,  
residing at Yakima.

Filed 11-26-34. [121]

# DESCRIPTION OF REAL PROPERTY OF SAID ESTATE

	Assessed Land	Valuation Improvements	Appraised Valuation
	\$	\$	
Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 of Yakima Heights Residence Tract according to the official plat thereof on file and of record in the office of the Auditor of Yakima County, Washington, together with all the tenements, hereditaments and appur- tenances to the same belonging or in anywise appertaining .....	2,650.00	4,500.00	20,000.00

	Assessed Land	Valuation Improvements	Appraised Valuation
Lots 25, 26, 27, 28 and 29, in Block 51 of the City of Yakima, formerly North Yakima, according to the official plat of the Town of North Yakima, now on file and of record in the office of the Auditor of Yakima County, Washington.....	14,100.00	39,000.00	130,000.00
The East 15 feet of Lot 10 and all of Lots 11 and 12 in Block 31 of the town of North Yakima, now City of Yakima, according to the official plat thereof on file and of record in the office of the Auditor of Yakima County, Washington .....	22,500.00	126,900.00	300,000.00
Lots 9, 10 and 11 in Block 3 of the Town plat of Grandview in the County of Yakima, State of Washington, according to the official plat thereof on file and of record in the office of the Auditor of said County and State .....	390.00	2,030.00	3,500.00
Lots 7 and 8 in Block 18 of the Town of Grandview, according to the official plat thereof now on file and of record in the office of the Auditor of Yakima County, Washington.....	760.00	3,810.00	5,000.00
The East Half of the Southwest quarter and the North-half of the North-west quarter of the Southwest quarter of Section 6, Township 8, North of Range 28 E.W.M., in the County of Benton, State of Washington.....	80.00	None	1.00
An un-divided one-half interest in the North half of the Northeast quarter and the East half of the Northwest quarter of Section 24, Township 20 North, Range 9 E.W.M., containing 160 acres, more or less, situated in King County, State of Washington.....	1,650.00	None	1,000.00

	Assessed Land	Valuation Improvements	Appraised Valuation
Lots 6, 7, 8 and the East 5 feet of 9, Block 124, 1st Addition to the City of Wapato, Washington.....	240.00	880.00	2,200.00 [122

Lots 1, 2, 3, 4, 5, and the North half  
of Lot 6 in Block 2, of the original  
Town of Ephrata, Grant County,  
Washington.

This property sold on contract to  
Mr. Fred Jones, Ephrata. Deed to  
be delivered upon payment of  
amount due, \$36.07.....

36.0

#### DESCRIPTION OF PERSONAL PROPERTY OF SAID ESTATE

	Appraised Valuation
Note dated April 3, 1923, in the original amount of \$100. due September 1, 1924, bearing interest at 8%, signed by Donald H. Cameron. Nothing paid on principal or interest.....	None
Note dated January 29, 1929, in the original amount of \$200. due October 1, 1929, bearing interest at the rate of 8%, signed by Gertrude Howard, secured by chattel mortgage on piano and bench. Nothing paid on principal or interest.....	None
Note dated November 19, 1923, in the sum of \$5000.00, due January 1, 1928, bearing interest at the rate of 8%, signed by A. E. Howard and Grace M. Howard, husband and wife. There is a balance due of \$3400. principal, plus \$1783.10 in- terest and \$2377.00 taxes paid by the deceased, making a total due of \$7560.10. Said note is se- cured by a mortgage on the following described real property situate in King County, State of Washington:	

**Appraised  
Valuation**

Lots 29 to 33, inclusive, in Block 20 Lake Union Shore Lands; also Lots 27 to 31, inclusive and Lots 36 to 40 inclusive, in Block 37, Map of Brooklyn Addition to Seattle, Washington, according to plat recorded in Vol. 7 of Plats at page 32 of the records of King County, Washington .....	2,000.00
One-half interest in a note dated December 1, 1923, due Feb. 14, 1925, in the sum of \$3869. bearing interest at the rate of 6% per annum, signed by Arthur Johnson and Elma D. Johnson. There is a balance due on said note in the sum of \$1934.50. Said note is payable to the order of Fred Chandler and A. E. Larson.....	None
Note dated October 19, 1929, and due October 19, 1932, in the original sum of \$3600 bearing interest at the rate of 7% per annum, signed by W. E. Lovell and Frances A. Lovell. There is a balance due on said note in the sum of \$3350 principal, plus \$387.57 interest, or a total of \$3737.57 .....	3,737.57
Note dated August 27, 1928, and due August 27, 1929, in the original sum of \$500, bearing interest at 8% per annum, signed by Ralph O. Olson, on which there is a balance due and unpaid in the sum of \$319.80.....	319.80
Note dated March 7, 1925, in the sum of \$100, bearing interest at 8% per annum, due on demand, signed by Ralph O. Olson and Barbara B. Olson. Nothing paid on principal or interest.....	None
	[123]
Note dated September 10, 1924, in the sum of \$300. bearing interest at 7% per annum, due on demand, signed by Ralph O. Olson and Barbara B. Olson. Nothing paid on principal or interest.....	None

Appraised  
Valuation

Note dated January 29, 1925, in the sum of \$100. bearing interest at the rate of 7% per annum, due on demand, signed by Ralph O. Olson and Barbara B. Olson, husband and wife. Nothing paid on principal or interest.....	None
Note dated November 1, 1926, due May 1, 1927, in the sum of \$500. bearing interest at the rate of 8% per annum, signed by S. J. Whitecombe. There is a balance due of \$500 principal and \$244 interest, or a total of \$744.00.....	None
Note dated November 1, 1926, due November 1, 1927, in the sum of \$500. bearing interest at 8% per annum, signed by S. J. Whitecombe. There is a balance due of \$500. principal and \$244. interest, or a total of \$744.00.....	None
Note dated December 23, 1931, in the sum of \$8000. bearing interest at 8% per annum, signed by D. A. McDonald, Alex E. McCredy and Harry Jones, on which there is a balance due including interest in the sum of \$4468.17.....	3,000.00
Note dated April 1, 1933, in the sum of \$592.33, bearing interest at 7% per annum from date until paid, signed by W. A. McLaughlin, due December 30, 1934. There is a balance due of \$592.33 principal and \$17.98 interest, or a total of \$610.31.....	610.31
Note dated April 22, 1933, in the sum of \$770.76, bearing interest at 8% per annum from date until paid, due April 21, 1934, signed by J. E. Bittner, Jr. There is a balance due of \$770.76 principal and \$10.20 interest, or a total of \$780.96	780.96
Note dated February 13, 1934, in the sum of \$274.25, bearing interest at 8% from date until paid, due February 13, 1935, signed by W. C. Ketchum. There is a balance due of \$274.25 principal and \$7.02 interest, or a total of \$281.27	281.27



	Appraised Valuation
Note dated March 3, 1934, in the sum of \$700. bearing interest at 8% per annum from date until paid, due September 3, 1934, signed by Delmar F. Bice. There is a balance due of \$700. principal and \$14.58 interest, or a total of \$714.58.....	714.58
Note dated March 9, 1934, in the sum of \$216.85, bearing interest at 8% per annum from date until paid, due July 9, 1934 signed by W. G. Boland. There is a balance due of \$216.85 principal and \$6.53 interest, or a total of \$223.38.....	None
Note dated March 10, 1934, in the sum of \$450.00, bearing interest at 8% per annum from date until paid, due December 10, 1934, signed by Geo. and F. Mullins. There is a balance due of \$410 principal and \$8.65 interest, or a total of \$418.65	205.00 [124]
Note dated May 4, 1934, in the sum of \$491.78, bearing interest at 8% per annum from date until paid, due August 1, 1935, signed by Lafe Bond. There is a balance due of \$481.78 principal and \$3.61 interest or a total of \$495.39.....	None
Note dated May 4, 1934, in the sum of \$297.00, bearing interest at 8% per annum after maturity due April 4, 1935, signed by Hull & Shropshire, on which there is a balance due of \$297.00.....	297.00
Note dated May 15, 1934, in the sum of \$690, bearing interest at 8% per annum after maturity due May 16, 1935, signed by Chester Johnston, on which there is a balance due of \$690.00	345.00
Note dated December 15, 1932, in the sum of \$25. bearing interest at 8% per annum from date until paid, due July 10, 1933 signed by Paul Benoit, on which there is a balance due of \$25.....	25.00
Note dated January 29, 1934, in the sum of \$532.45, bearing interest at 8% per annum from date until paid, due January 30, 1935, signed by J. E. Bittner, Sr. There is a balance due of \$532.45 principal, and \$15.26 interest, or a total of \$547.71	372.00

Appraised  
Valuation

City of Yakima L.I.D. #395 bonds, Nos. 51 to 69 incl., of the par value of \$500. each, bearing interest at 6% per annum, due 1937.....	9,022.75
City of Yakima L.I.D. #422 Bonds, Nos. 51 to 73 incl., of the par value of \$500. each, bearing interest at 6% per annum, due 1938.....	11,829.67
City of Yakima L.I.D. #404 Bonds, Nos. 55 to 74 incl. of the par value of \$500. each, bearing interest at 6% per annum, due 1938.....	5,523.33
City of Yakima L.I.D. #386 Bonds, Nos. 40 to 47 incl., of the par value of \$100. each, bearing interest at 6% per annum, due 1936.....	660.00
City of Yakima L.I.D. #374 Bonds, Nos. 18. of the par value of \$500. bearing interest at 6%, due 1935 .....	517.25
City of Yakima L.I.D. #372 Bonds, Nos. 13 to 27 incl., of the par value of \$500. each, bearing interest at 6%, due 1935.....	3,296.25
Yakima County Sub-district #7, Drainage Improvement District #3, Bonds, Nos. 125, 127 and 141 to 152 incl. 165 to 177 incl. 191 to 202 incl. and 215 to 219 incl. of the par value of \$500. each, bearing interest at 6½%, variable maturities.....	11,633.64
Yakima County Sub-district B, Drainage District No. 18, Bonds Nos. 24 to 28 incl, of the par value of \$200. each, bearing interest at 6%, due 1935.....	1,026.17
Drainage District No. 31 Bonds, Nos. 55 to 60 incl. and 86, of the par value of \$500. each, Yakima County Drainage Improvement bearing interest at 6%, due 1937.....	1,295.00
	[125]
Leo S. Ross Construction Company Bonds, Nos. 58 to 60 incl. due 1936, 63 to 67 incl. due 1937 and 88 to 97, incl. due 1938, of the par value of \$1000. each, bearing interest at 7%.....	19,025.86

	Appraised Valuation
Leo S. Ross Construction Company Bonds, Nos. 52 to 57 incl. due 1936, 61 to 62 due 1937, 68 to 87 incl. due 1938, of the par value of \$500.00 each, bearing interest at 7%.....	13,017.69
Naches Court Apartment Bonds, Nos. 9, 32, 10, 33 to 37 incl. 69 to 84 incl. of the par value of \$500. each, bearing interest at 6%, due 1935.....	9,000.00
Y.M.C.A. Dormitory Bond, No. 218, due April 4, 1933, of the par value of \$100.....	None
Monumental Mining Company Prior Lien Gold Bonds, Nos. 36 to 50 incl., of the par value of \$100. each, bearing interest at 8%, due August 1931 .....	None
Monumental Mining Company Prior Lien Gold Bonds, Nos. 149 to 154 incl., of the par value of \$250. each, bearing interest at 8%, due August, 1931 .....	None
Monumental Mining Company Prior Lien Gold Bonds, Nos. 221 to 224 incl., of the par value of \$500. each, bearing interest at 8%, due August, 1931 .....	None
The Alliance Mining Company Bonds, Nos. 370 to 379 incl. of the par value of \$100. each, bearing interest at 6%, due Dec. 1, '24.....	None
Cert. No. 2831 for 7305 shares of capital stock of the Sunshine Mining Company of the par value of 10¢ per share.....	50,404.50
Cert. No. 2996 for 11657 shares of capital stock of the Sunshine Mining Co. of the par value of 10¢ per share .....	80,433.30
Cert. No. 2826 for 1000 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	6,900.00
Cert. No. 2821 for 2000 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	13,800.00

Appraised  
Valuation

Cert. No. 2827 for 1109 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	7,652.10
Cert. No. 2822 for 5000 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	34,500.00
Cert. No. 2792 for 1500 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	10,350.00
Cert. No. 2718 for 2250 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	15,525.00
Cert. No. 2714 for 16632 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	114,760.80
Cert. No. 2703 for 2100 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	14,490.00
Cert. No. 1147 for 10000 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	58,250.00
[126]	
Cert. No. 1551 for 2500 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	17,250.00
Cert. No. 1357 for 2000 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	13,800.00
Cert. No. 1388 for 52921 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	365,154.90
Cert. No. 738 for 5000 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	29,125.00
Cert. No. 818 for 500 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	3,450.00

	Appraised Valuation
Cert. No. 1346 for 30000 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	207,000.00
Cert. No. 739 for 5000 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	34,500.00
Cert. No. 670 for 2000 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	13,800.00
Cert. No. 601 for 1000 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	69,000.00
Cert. No. 788 for 500 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	3,450.00
Cert. No. 630 for 17000 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	117,300.00
Cert. No. 633 for 10000 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	69,000.00
Cert. No. 640 for 3000 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	20,700.00
Cert. No. 654 for 5000 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	34,500.00
Cert. No. 736 for 5000 shares of capital stock of the Sunshine Mining Company, of the par value of 10¢ per share.....	34,500.00
Cert. No. 42 for 52½ shares of Curtis-Wiley Marine Salvors capital stock, of no par value.....	None
Cert. No. 490 for 10,000 shares of capital stock of the Monumental Mining Company, of the par value of 10¢ per share.....	None

	Appraised Valuation
Cert. No. 21 for 20,000 shares of capital stock of the Monumental Mining Company, of the par value of 10¢ per share.....	None
Cert. No. 94 for 30,000 shares of capital stock of the Monumental Mining Company, of the par value of 10¢ per share.....	None
Cert. No. 392 for 10,000 shares of capital stock of the Monumental Mining Company, of the par value of 10¢ per share.....	None
Cert. No. 2790 for 100 shares of stock of the Old National Corporation Class A, of no par value.....	None
Cert. No. 73 for 135 shares of capital stock of the Surety Finance Company, of the par value of \$100. per share.....	10,800.00 [127]
Cert. No. 76 for 100 shares of capital stock of the Surety Finance Company, of the par value of \$100. per share.....	8,000.00
Cert. No. 40 for 50 shares of capital stock of the Surety Finance Company, of the par value of \$100. per share.....	4,000.00
Cert. No. 23 for 150 shares of capital stock of the Surety Finance Company, of the par value of \$100. per share.....	12,000.00
Cert. No. 48 for 22 shares of capital stock of the Surety Finance Company, of the par value of \$100. per share.....	1,760.00
Cert. No. 50 for 100 shares of capital stock of the Surety Finance Company, of the par value of \$100. per share.....	8,000.00
Cert. No. 51 for 17 shares of capital stock of the Surety Finance Company, of the par value of \$100. per share.....	1,360.00
Cert. No. 52 for 170 shares of capital stock of the Surety Finance Company, of the par value of \$100. per share.....	13,600.00



	Appraised Valuation
Cert. No. 60 for 105 shares of capital stock of the Surety Finance Company of the par value of \$100. per share.....	8,400.00
Cert. No. 64 for 51 shares of capital stock of the Surety Finance Company, of the par value of \$100. per share.....	4,080.00
Cert. No. 351 for 6 shares of capital stock of the Texwa Oil Company, of no par value.....	None
Cert. No. 352 for 90 shares of capital stock of the Texwa Oil Company, of no par value.....	None
Cert. No. 353 for 30 shares of capital stock of the Texwa Oil Company, of no par value.....	None
Cert. No. 12 for 70 shares of capital stock of the United Investment Corporation, of the par value of \$20. per share.....	None
Cert. No. 2 for 5 shares of Preferred capital stock of the Yakima Country Club Holding Company, of the par value of \$200. per share.....	None
Cert. No. 96 for 1 share of Common capital stock of the Yakima Country Club Holding Company, of the par value of \$100. per share.....	None
Cert. No. 1296 for 16 shares of capital stock of Yakima Masonic Temple Assn., of the par value of \$25. per share.....	200.00
Cert. No. 25 for 300 shares of capital stock of Yakima Investment Corporation, of the par value of \$40. per share.....	6,000.00
Cert. No. 51 for 175 shares of capital stock of Yakima Hardware Company, of the par value of \$100. per share.....	14,000.00
Cert. No. 56 for 185 shares of capital stock of Yakima Hardware Company, of the par value of \$100. per share.....	14,800.00
Cert. No. 42 for 50 shares of capital stock of West Side National Bank, of the par value of \$100. per share .....	7,250.00

	Appraised Valuation
Cert. No. 380 for 1281 shares of capital stock of the Yakima Holding Corporation, of no par value.....	16,012.50 [128]
Cert. No. 243 for 400 shares of capital stock of the Yakima Holding Corporation, of no par value.....	5,000.00
Cert. No. 33 for 1000 shares of capital stock of the Yakima Holding Corporation, of no par value.....	12,500.00
Cert. No. 1 for 1000 shares of capital stock of the Yakima Holding Corporation, of no par value.....	12,500.00
Cert. No. 34 for 1000 shares of capital stock of the Yakima Holding Corporation, of no par value.....	12,500.00
Cert. No. 631 for 288 shares of capital stock of the Yakima Holding Corporation, of no par value.....	3,600.00
Cert. No. 16 for 2 shares of capital stock of the Western Airlines Inc., of the par value of \$25.00 per share .....	None
Cert. No. 83 for 4 shares of capital stock of the Western Airlines Inc., of the par value of \$25 per share .....	None
Cert. No. 015281 for 4 shares of Preferred capital stock of the Washington Water Power Company, of the par value of \$100. per share.....	280.00
Cert. No. 1 for 5000 shares of Preferred capital stock of the Spindletop Western Oil Company, of the par value of \$1. per share.....	None
Cert. No. 13 for 178,800 shares of capital stock of the Daisy Mining & Milling Company, of the par value of \$1. per share.....	None
Cert. No. 1 for 50 shares of capital stock of Locke Hardware Company, of the par value of \$100. per share .....	None
Cert. No. 16 for 15 shares of capital stock of the Foster-Morgan Lumber Company, of the par value of \$100. per share.....	None

	Appraised Valuation
Cert. No. 6667 for 236.8125 shares of capital stock of the Yakima Holding Corporation, of no par value .....	2,960.15
Due from J. E. Bittner, Jr.....\$265.06	219.04
Due from W. H. Carver..... 386.00	386.00
Due from J. E. Drain & Co..... 13.35	13.35
Due from C. J. Lynch, M.D..... 464.50	464.50
Due from J. L. McDonald, M.R..... 16.80	16.80
Due from W. A. McLaughlin..... 96.80	96.80
Due from W. E. Parker..... 13.10	13.10
Due from Shropshire & Hull..... 13.30	13.30
Due from State Tax Commission .....	7.15
Jewelry .....	460.00
Electric range, vacuum cleaner, etc.....	140.00
Household furniture, and furnishings in residence.....	1,800.00
	[129]
Piano .....	20.00
Furniture, fixtures, tools and equipment used in connection with the A. E. Larson Building.....	4,000.00
Cash on deposit in Personal checking account in Yakima First National Bank as of June 7, 1934	76.65
Cash on deposit in Building checking account in Yakima First National Bank as of June 7, 1934	1,103.49
Partnership Finance Company.....	2,571.06

State of Washington,  
County of Yakima—ss.

E. P. Hoffman, being first duly sworn, says:  
That he is the Trust Officer of Yakima First  
National Bank, executor of the above entitled es-  
tate, and makes this verification for and on be-

half of said executor. That the foregoing inventory contains a true statement of all of the estate of A. E. Larson, deceased, which has come into his possession and knowledge, and particularly all moneys belonging to said estate, and all just claims of said estate against this affiant and against said executor, except the interest of A. E. Larson, deceased, in the partnership formerly composed of A. E. Larson and Grover C. Burrows, doing business as Burrows Motor Co., and inventory of which said partnership estate and interest has heretofore been filed in the above court.

E. P. HOFFMAN

Subscribed and sworn to before me this 26th day of October, 1934.

C. W. HALVERSON,

Notary Public in and for the State of Washington,  
residing at Yakima.

We, the undersigned, duly appointed appraisers of the above entitled estate, hereby certify that the property mentioned in the foregoing inventory has been exhibited to us, and that we appraised the same at the several sums set opposite each item thereof, in figures; and appraise the total of said estate as above set forth in the sum of \$2,190,872.66 which we find to be its fair value.

We further appraise the whole of said estate of the above named decedent, including the appraised value of the said partnership estate, in the sum of \$162,608.13, in the sum of \$2,353,480.79.

Witness our hands this 24th day of November,  
1934.

ALEXANDER MILLER  
GEO. H. BRADSHAW  
LLOYD L. WIEHL [130]

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PETITIONER'S EXHIBIT 8

In the Superior Court of the State of Washington  
In and for Yakima County.

No. 8561

Filed 4-25-35

IN THE MATTER OF THE ESTATE  
OF

A. E. LARSON, Deceased.

FINAL REPORT OF EXECUTOR: PETITION  
FOR DISTRIBUTION OF ESTATE, AND  
FOR DISCHARGE OF EXECUTOR

To the Honorable R. B. Milroy, Court Commissioner  
of the above entitled court:

The report and petition of Yakima First National  
Bank, executor of the Estate of A. E. Larson, de-  
ceased, respectfully shows:

1.

That A. E. Larson died at Seattle, Washington,  
on or about the 7th day of June, 1934, and that  
decedent at the time of his death was a resident of  
Yakima, Yakima County, Washington, and left an  
estate consisting of real and personal property in  
said county subject to administration.

## 2.

That the decedent left a will bearing date the 31st day of May, 1934, under which said will your petitioner was named executor and that on the 13th day of June, 1934, said will was duly admitted to probate and that your petitioner was appointed as executor thereunder and immediately qualified as such and has been since then and is now the duly appointed, qualified and acting executor of the estate of A. E. Larson deceased.

## 3.

That notice to creditors has been published in the matter of said estate as required by law and the order of this court. [131]

## 4.

That an inventory and appraisement of said estate has been duly made, returned and filed herein as required by law and the order of the court.

## 5.

That more than six months have expired since the date of the first publication of notice to creditors, to-wit: more than six months from the 20th day of June, 1934, and that all claims against said estate have been paid.

## 6.

That as executor your petitioner has received a total of \$796,650.64, as is more particularly shown by the record of receipts attached hereto and marked Exhibit "A" and made a part hereof by reference; and that your petitioner has expended the total



sum of \$717,986.66, as is more particularly shown by the record of disbursements attached hereto, marked Exhibit "B" and made a part hereof by reference.

## 7.

That all bequests and trusts provided by said will have been paid except \$45,000.00 of the \$50,000.00-bequest to the people of the city of Yakima for the improvement of the Yakima Public Library, and the full sum of \$40,000.00 to the people of Yakima County, State of Washington, to be used for the improvement of Painted Rocks Park, and that said amounts will be paid before hearing on this petition.

## 8.

That all expenses of administration have been paid except the sum of \$5.00 necessary for the filing of this final report, and the further sum that will be required for the publication of the notice of time and place of hearing this [132] report and petition; the balance of the fee of your petitioner and of its attorneys, which said fees have not been fixed.

## 9.

That notice has been given to the inheritance tax and escheat division of the State of Washington as required by law and that the sum of \$28,750.64 has been paid as inheritance tax, but no final receipt therefor has been issued and no complete adjustment has been made thereof; and that said estate is subject to a federal estate tax of which the sum of \$56,815.74 has been paid, and that a further sum

may be required, but no audit and adjustment has been made as yet with the collector of internal revenue.

10.

That a description of all property owned by said estate so far as your petitioner is able to ascertain is shown in the inventory and appraisement filed herein.

11.

That at the time of his death the decedent left surviving him his widow, Rose B. Larson, and that all the property described in the inventory and appraisement herein was community property, and that the following are the heirs, legatees and devisees named in the Will:

Rose B. Larson, wife of said deceased;  
Claudia Tellett, sister of said deceased;  
Gertrude Larson, sister of said deceased;  
Ethel Stevenson, sister of said deceased;  
Donald Arthur Larson, nephew of said deceased;  
Ralph Olson, Jr., nephew of said deceased;  
Barbara Olson, niece of said deceased;  
Mrs. Leilah Nelson, niece of said deceased;  
Margaret Stevenson, niece of said deceased;  
Gertrude May Stevenson, niece of said deceased;  
Grover Burrows;  
R. M. Hardy,  
W. H. McCullough,  
E. M. Fisher,  
Rotary Club of Yakima, Washington, [133]

Salvation Army, of Yakima, Washington,  
City of Yakima, a municipal corporation, and  
Yakima County, a municipal corporation.

## 12.

That your petitioner found it necessary to obtain counsel to handle the legal work in connection with the probating of the estate of said deceased, and did employ the firm of Rigg, Brown & Halverson to perform said legal services; that said attorneys have been paid the amount shown in Exhibit "B" as an advance on their fee, and that your petitioner has received the sum shown in Exhibit "B" as an advance on its fee, but the fee of your petitioner and its attorneys has not been fixed.

Wherefore, your petitioner prays that an order be entered as follows:

1. Fixing the time and place of hearing this final report, petition for distribution of estate, and petition for discharge of executor.

2. Approving and confirming the final report of the executor.

3. Fixing and authorizing the payment of executor's fee and executor's attorney's fee.

4. Distributing all of said estate as provided in said will.

5. Discharging your petitioner as executor of said estate at such time as said estate is finally closed and the remaining bequests are paid, the executor's fee and the executor's attorney's fee paid, and the receipt is obtained from the inheri-

tance tax and escheat division of the State Tax Commission of the State of Washington, and from the Bureau of Internal Revenue of the United States Treasury Department, showing the payment of inheritance and estate [134] taxes due.

6. For such other and further orders, judgments and decrees as may be proper, just or necessary in the premises.

RIGG, BROWN & HALVERSON  
Attorneys for Petitioner.

State of Washington,  
County of Yakima—ss.

E. P. Hoffman, being first duly sworn, on oath deposes and says: That he is the trust officer of Yakima First National Bank, petitioner above named, and makes this verification for and on its behalf, being authorized to do so; that he has read the within and foregoing Final Report of Executor, Petition for Distribution of Estate, and for Discharge of Executor, knows the contents thereof, and believes the same to be true.

E. P. HOFFMAN

Subscribed and sworn to before me this 19th day of April, 1935.

NAT U. BROWN

Notary Public in and for the  
State of Washington, residing  
at Yakima. [135]

## PETITIONER'S EXHIBIT 9

In the Superior Court of the State of Washington,  
in and for Yakima County.

No. 8561

In the Matter of the Estate of  
A. E. LARSON, Deceased.

## SUPPLEMENTAL REPORT

Comes now the Yakima First National Bank, executor of the above entitled estate and reports as follows, to-wit:

## I.

That since the filing of its final report herein there has been received by it an aggregate of moneys as shown by Exhibit "A" attached hereto and made a part hereof by reference; and there has been expended by it the sum set out in Exhibit "B" attached hereto and made a part hereof by reference, leaving a balance on hand as shown by Exhibit "C" attached hereto and made a part hereof by reference.

## II.

That attached hereto and marked Exhibit "D" is a detailed report of receipts and disbursements in the Larson building account.

RIGG, BROWN & HALVERSON  
Attorneys for Executor

Filed June 25 '35. [142]

## RECEIPTS

1934

June 14	Balance in personal checking account transferred to trust department .....	\$ 66.65
	Burrows Motor Company—salary.....	73.38
	A. E. Larson Bldg.—transfer of rentals.....	900.00
	Donnelly Hotel Company—June rent.....	1,600.00
	D. V. Morthland, Trustee—in full payment W. E. & Frances A. Lovell mortgage to A. E. Larson.....	3,737.57
	Leo S. Ross Construction Company—interest coupons due June 1, 1934 on \$32,000 7% bonds.....	1,120.00
June 29	Guaranty Trust Company—director's fees.....	20.00
	Sunshine Mining Company—May salary.....	200.00
	A. E. Larson Bldg.—transfer of rentals.....	2,300.00
	Washington Water Power Co.—dividend on 4 shares pref. ....	6.00
	Rent on house at Wapato for June \$20. less expense of pipe \$1.25.....	18.75
	Grandview Motor Company—June rent.....	40.00
July 2	Sunshine Mining Company—Dividend No. 30 @ 16¢ per share on 210,974 shares.....	33,755.84
	West Side National Bank—dividends on 50 shares.....	200.00
	Surety Finance Company—dividend on 900 shares.....	3,600.00
July 11	Sunshine Mining Company—balance on June salary.....	46.67
	Interest coupons due July 1st on Sub. Dist. No. 7 of Drg. Improvement Dist. No. 3, Yakima County on 22,000 par.....	715.00
	Interest coupons due July 1 on Sub. Dist B of Drg Dist. No. 18 on par \$1,000.....	30.00
July 17	Grandview Motor Company—July rent.....	40.00
	Rent from house at Wapato \$20.00 less 25¢ exchange.....	19.75
	Donnelly Hotel Company—July rent.....	1,600.00
July 18	A. E. Larson Bldg.—transfer of rentals.....	2,400.00
Aug. 1	Burrows Motor Company—rent for June, July, & August @ \$350.00 per month.....	1,050.00
	Burrows Motor Company—payment on principal \$6,184.54 and on interest \$823.39.....	7,007.93
Aug. 2	Sale of Sunshine Mining Company stock—15,000 shares sold at 5.82½.....	87,375.00



Aug. 3	Interest coupons due 10-1-33—Naches Court Apt. bonds \$12,000 par.....	360.00
Aug. 7	A. E. Larson Bldg.—transfer of rentals.....	500.00
Aug. 10	Donnelly Hotel Company—August rentals.....	1,600.00
Aug. 15	Grandview Motor Company—August rent.....	40.00
	A. E. Larson Bldg.—transfer of rentals.....	1,000.00
Aug. 24	A. E. Larson Bldg.—transfer of rentals.....	400.00
	Rent from house at Wapato \$20.00 less 25¢ exchange	19.75
	Interest on Ralph O. Olson, Jr. note to Aug 27 '34 @ 8% .....	24.00
Sept 1	Sale of Sunshine Mining Company stock—1,000 shares @ 6.90.....	6,900.00
	Sale of Sunshine Mining Co. stock—2,000 shares @ 6.90 .....	13,800.00
Sept 2	Burrows Motor Company—rent for September.....	350.00
	Burrows Motor Company—Int. on \$75,000 @ 5½% for Aug. ....	343.75
Sept 7	Sale of Sunshine Mining Co. stock—1500 shares @ 6.90 .....	10,350.00
Sept 10	A. E. Larson Bldg.—transfer of rentals.....	1,500.00
Sept 13	Donnelly Hotel Company—September rent.....	1,600.00
Sept 13	Sale of Sunshine Mining Co. stock—10,000 shares @ 6.90 .....	69,000.00
Sept 14	Interest coupons due Sept. 10 on L.I.D. #395 on par of \$9500.00.....	570.00
	Bonds called for payment Sept. 10—L.I.D. #395, ten bonds Nos. 51 to 60 incl. @ \$500.00 each.....	5,000.00
	A. E. Larson Bldg.—transfer of rentals.....	1,000.00
Sept 15	Dividend—Washington Water Power Company on 4 shares .....	6.00
	Sale of Sunshine Mining Co. stock—1000 shares @ 6.90 .....	6,900.00
		<hr/>
		\$269,186.04

Exhibit "A"

	Forward .....	269,186.04
Sept 18	Grandview Motor Company—September rent.....	40.00
Sept 26	Sale of Sunshine Mining Co. stock—5,000 sh. @ 6.90	34,500.00
Oct. 1	Dividend—Sunshine Mining Co.—#31 @ 16¢ per share on 180,474 shares.....	28,875.84
Oct. 2	Bond #40 of L.I.D. #386 called for payment 10-1-34 .....	100.00
	Interest coupons on \$800.00 L. I. #. #386 @ 6%.....	48.00
Oct. 5	Burrows Motor Company—rent for October.....	350.00
	Burrows Motor Co.—Int. on \$75,000 @ 5½% for Sept. ....	343.75
Oct. 11	Donnelly Hotel Company—October rent.....	1,600.00
	Sale of Sunshine Mining Co. stock—5000 sh. @ 6.90	34,500.00
Oct. 24	Grandview Motor Company—October rent.....	40.00
	A. E. Larson Bldg.—transfer of rentals.....	1,500.00
	Interest coupon due 10-10-34 on L.I.D. #372 par \$7500 .....	450.00
Oct. 6	A. E. Larson Bldg.—transfer of rentals.....	1,000.00
Nov. 3	Burrows Motor Company—rent for November.....	350.00
	Burrows Motor Company—Int on \$75,000 @ 5½% for Oct. ....	343.75
Nov. 7	Sale of Sunshine Mining Co. stock—22,000 sh. A 6.90 .....	151,800.00
Nov. 10	Donnelly Hotel Company—rent for November.....	1,600.00
Nov. 15	Bond #18 of L. I. D. #374 called for payment 11-11-34 Par \$500.00 and one interest coupon due thereon \$30.00 .....	530.00
Nov. 16	Sale of Sunshine Mining Co. stock—1500 sh. @ 6.90	10,350.00
Nov. 23	Sale of Sunshine Mining Co. stock—5000 sh. @ 6.90	34,500.00
	Sale of West Side Nat'l Bank stock—50 shares.....	7,250.00
	Grover Burrows—payment on principal, purchase of A. E. Larson's interest in Burrows Motor Company .....	15,000.00
Nov. 24	Sale of Sunshine Mining Co. stock—5000 sh. @ 6.90	34,500.00
Nov. 26	A. E. Larson Bldg.—transfer of rentals.....	1,000.00

Nov. 27	Burrows Motor Company—check for partnership, finance company \$1,651.06 which check together with 184 shares of Yakima Co. Hort. Union stock par \$10 per share accepted at 50¢ on the dollar amounting to \$920.00—this amount together with check of \$1,651.06 covers total as shown by the appraisal \$2,571.06 .....	1,651.06
	Fred D. Jones—balance of interest due 6-7-34 on real estate contract \$36.07 and interest on interest \$1.05—tot. ....	37.12
Nov. 30	Grandview Motor Company—rent for November.....	40.00
	Sale of Sunshine Mining Co. stock—5000 sh. @ 6.90	34,500.00
Dec. 1	Interest coupons due 1201034—Leo Ross Construe- tion Co. bonds, par \$32,000 @ 7%.....	1,120.00
Dec. 5	Sale of Sunshine Mining Co. stock—5000 sh. @ 6.90	34,500.00
	Sale of Sunshine Mining Co. stock—1000 sh. @ 6.90	6,900.00
	Burrows Motor Company—rent for December.....	350.00
	Burrows Motor Company—Int. on \$60,000 @ 5½% for Nov. ....	327.75
Dec. 8	A. E. Larson Bldg.—transfer of rentals.....	1,000.00
Dec. 10	Donnelly Hotel Company—rent for December.....	1,600.00
Dec. 12	A. E. Larson Bldg.—transfer of rentals.....	1,500.00
Dec. 15	Burrows Motor Company—in full for Yakima Sav- ings & Loan Assn. stock.....	187.92
Dec. 18	Burrows Motor Company—check for dividend on Yakima Co. Hort. Union stock, 184 shares @ 50¢	92.00
	Dividend—Washington Water Power Company on 4 shares .....	6.00
	Grandview Motor Company—December rent.....	40.00
Dec. 19	Bonds called for payment 12-15-34 of L.I.D. #422, nos. 51 to 59 incl @ \$500 ea—\$4500 plus inter- est coupons on \$11,500 par L.I.D. #422 due 12-15-34 \$690.—total .....	5,190.00
Dec. 27	Dividend—Washington Co-op Egg & Poultry Assn. on 117 sh. preferred @ 8¢ and 125 sh. common @ 8¢ .....	19.36

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Jan. 2	Surety Finance Company—dividends on 900 shares.....	3,600.00
	Sunshine Mining Company—dividend #32 @ 20¢ on 125,974 sh.....	25,194.80
	Interest coupons due 1-1-35 Sub Dist B of Drg Imp Dist 18.....	30.00
	Bonds called for payment 1-1-35 Sub Dist B of Drg Impr Dist #18, bonds Nos. 24 50 28 incl @ \$200.00 each .....	1,000.00
		<hr/>
		748,643.39
		[137]
	Forward .....	748,643.39
Jan. 4	Burrows Motor Company—Int. on \$60,000 @ 5½% for Dec. ....	275.00
	Burrows Motor Company—Rent for January.....	350.00
Jan. 10	A. E. Larson Bldg.—transfer of rentals.....	2,000.00
Jan. 11	Donnelly Hotel Company—rent for January.....	1,600.00
Jan. 17	A. E. Larson Bldg.—transfer of rentals.....	1,500.00
Jan. 21	Grandview Motor Company—rent for January.....	40.00
Jan. 23	Liberty Savings & Loan Assn.—interest on stock....	33.44
Jan. 29	Dividend—Yakima Hardware Co. on 360 shares of stock .....	2,880.00
Feb. 1	Burrows Motor Company—Int. on \$60,000 @ 5½% for Jan. ....	275.00
	Burrows Motor Company—Rent for February.....	350.00
Feb. 9	Donnelly Hotel Company—Rent for February.....	1,600.00
	A. E. Larson Bldg.—transfer of rentals.....	2,500.00
Feb. 20	Grandview Motor Company—February rent.....	40.00
Feb. 25	A. E. Larson Bldg.—transfer of rentals.....	1,000.00
Feb. 27	Interest coupons due 1-23-35—L. I. D. #404 on par \$10,000 @ 6%.....	600.00
Mar. 4	Burrows Motor Company—Int. on \$60,000 @ 5½% for Feb. ....	275.00
	Burrows Motor Company—Rent for March.....	350.00
Mar. 11	Donnelly Hotel Company—rent for March.....	1,600.00

Mar. 13	E. A. Boatman—to pay one-half 1934 real estate taxes on property owned by Boatman & Larson.....	29.69
	Fred Chandler—to pay one-half 1934 real estate taxes on Benton County property owned by Larson & Chandler.....	1.32
Mar. 13	A. E. Larson Bldg.—transfer of rentals.....	2,500.00
Mar. 14	Yakima Rotary Bldg.—repayments of \$14.00 & \$20.00 on account of a student loan advanced by Mr. Larson .....	34.00
Mar. 16	Washington Water Power Co.—dividend on 4 shares .....	6.00
Mar. 24	A. E. Larson Bldg.—transfer of rentals.....	800.00
Apr. 1	Sunshine Mining Company—dividend #33 @ 20¢ per share on 125,974 shares.....	25,194.80
Apr. 1	Yakima Masonic Temple Assn.—dividend on 16 shares .....	8.00
Apr. 2	Burrows Motor Company—Int. on \$60,000 @ 5½% for March .....	275.00
	Burrows Motor Company—Rent for April.....	350.00
Apr. 10	Donnelly Hotel Company—Rent for April.....	1,600.00
Apr. 2	Grandview Motor Company—Rent for March.....	40.00
		<hr/>
		\$796,750.64
		[138]

## RECEIPTS

(Continued)

	Forward .....	\$796,750.64
April 17	A. E. Larson Bldg.—transfer of rentals.....	4,000.00
27	Grandview Motor Company—Rent for April.....	40.00
May 1	Peter Sellen, Trustee—payment in full for Texwa Oil Company stock, \$500.00 subscription less \$53. expense .....	447.00
4	Burrows Motor Company—Rent for May.....	350.00



4	Burrows Motor Company—Int. on \$60,000 @ 5½% for April .....	275.00
	Burrows Motor Company—paid one-half for Aero Automatic Fire Alarm on Burrows Motor Company building .....	144.00
11	Western Airlines, Inc.—first payment on stock settlement .....	7.50
13	Donnelly Hotel Company—Rent for May.....	1,900.00
18	Grandview Motor Company—Rent for May.....	40.00
21	A. E. Larson Bldg.—transfer of rentals.....	2,400.00
June 1	Interest coupons due June 1st on \$32,000 per Leo S. Ross Construction Company bonds, 7%.....	1,120.00
5	Burrows Motor Company—Rent for June.....	350.00
	Burrows Motor Company—Int. on \$60,000 @ 5½% for May .....	275.00
11	Donnelly Hotel Company—Rent for June.....	1,900.00
17	R. W. Dent Insurance Agency, Inc.—return premium on policy No. 1099 Burrows Motor Company building \$358.15 and dividend on earned premium \$69.57—total .....	400.17
19	A. E Larson Building—Transfer of rentals.....	2,000.00
20	Grandview Motor Company—June Rent.....	40.00
21	Washington Water Power Company—dividend.....	6.00
		<hr/>
		\$812,445.31

Exhibit "A"

[144]

## DISBURSEMENTS

June 14	Mrs. Rose B. Larson—by court order \$5000 and for monthly allowance \$1500.....\$	6,500.00
	Collector of Internal Revenue—second quarterly installment on 1935 income tax—Adelbert E. Larson \$327.32 and Rose B. Larson \$327.32.....	654.64
June 29	R. W. Dent Insurance Agency—premium on 3-yr fire insurance policy on Donnelly Hotel Building .....	1,404.32
June 30	Joe Douglas—Gardener for June.....	65.00
July 17	Mrs. Rose B. Larson—July allowance less advance to gardener, \$75.00.....	1,435.00



July 18	Yakima Hardware Company—claim filed for merchandise .....	17.52
	Joseph Yolo—claim filed for merchandise.....	17.50
	Dr. W. L. Ross—claim filed for professional services .....	1,200.00
	Miss Ida E. Metz—claim filed for professional services .....	27.00
	Drs. Nelson, Jacobsen & Ohman—claim for professional services .....	1,200.00
	Miss Hazel Rottler—claim for professional services .....	21.00
	Jean McCahren—claim for professional services.....	12.00
	City Cleaners & Laundry—for services.....	14.24
	Dorothy Henry, Inc.—claim for services & merchandise .....	50.75
	Swedish Hospital—claim for hospital fees and services .....	659.73
	St. Elizabeth's Hospital—hospital fees and services .....	117.45
	Olga Rod—professional services.....	23.25
	Yakima City Creamery—for merchandise.....	1.60
	City Meat Market—for merchandise.....	3.20
	Pacific Power & Light Co.—electric and other services .....	23.57
July 19	Mrs. Rose B. Larson—to reimburse for following claims filed against estate and paid by her:	
	French Electric Dye Works.....	\$5.60
	Pacific Tel & Tel Company.....	5.05
	Cliftons' .....	4.95
	John Dower Lumber Company.....	5.04
	City of Yakima, Water Dept.....	3.05
		23.69
July 31	Barnes-Woodin Company—claim filed for merchandise .....	90.56
	Mrs. Rose B. Larson—to reimubrse for bill she paid Yakima Medical & Surgical Clinic.....	3.50
	Shirley D. Parker—salary for July, assisting in administration of estate.....	1,000.00
	W. P. Fuller & Company—one plate glass 28x62 in Donnelly .....	10.16
	F. F. Herring, City Treasurer—irrigation taxes on Lots 1 to 10 incl. Yakima Heights Residence tracts .....	46.96
	C. M. Holdren—repairs on Donnelly Hotel roof.....	35.00
	Annavee Flower Shop—claim for merchandise.....	14.32

		H. H. Bowen—merchandise ordered by Mrs. A. E. Larson .....	22.40
		W. P. Fuller & Co.—one plate glass 24x68 in Donnelly .....	9.56
		Shaw & Sons—copper casket, two ambulance trips to Seattle and completed burial services; & sealing crypt in mausoleum.....	1,780.00
Aug. 1		Northern Life Ins. Co.—1st annual premium on \$20,000 policy on life of Grover Burrows, five-year term .....	279.00
Aug. 2		Rigg, Brown & Halverson—services \$6.00 and publishing notice to creditors \$9.12—total.....	15.12
		Surety Finance Company—in payment of notes and interest as follows:	
		10-13-33 Note, principal (balance.....\$ 3,000.00	
		Int. 6% from 12-31-33	
		to 8-1-34 .....	141.85
		11-25-33 Note, principal .....	12,500.00
		Int. 6% from 12-31-33	
		to 8-1-34 .....	437.50
		12-22-33 Note, principal .....	2,000.00
		Int. 5¾% from date to 8-1-34 .....	69.63
		1-2-34 Note, principal .....	2,000.00
		Int. 5¾% from date to 8-1-34 .....	66.76
		1-12-34 Note, principal .....	8,000.00
		Int. 5¾% from date to 8-1-34 .....	253.00
			<hr/>
			\$ 16,778.04
			[139]
		Forward .....	16,778.04
Aug. 2		2-13-34 Note, principal .....	\$ 5,000.00
		Int. 6% date to 8-1-34.....	139.17
		5-7-34 Note, principal (balance).....	9,500.00
		Int. 7% date to 8-1-34.....	157.21
		Additional interest to and including 8-1-34:	
		on 6% paper.....	3.41
		on 5¾% paper.....	1.92
		on 7% paper.....	1.85
			<hr/>
			\$43,272.30
			43,272.30

Aug. 2	Yakima First National Bank—in payment for the following notes and interest:		
	3-26-34 Note, principal .....	\$ 8,000.00	
	Int. @ 6% from date to 8-1-34 .....	170.67	
	3-17-34 Note, principal .....	41,000.00	
	Int. @ 6% from date to 8-1-34 .....	936.16	
		<hr/>	
		\$50,106.83	50,106.83
Aug. 10	Hull-Miller Company—bond of executor.....		260.00
Aug. 15	Mrs. Rose B. Larson—August allowance.....		1,500.00
	Ethel Stevenson—part payment of bequest.....		5,000.00
	Ethel Stevenson, Guardian for Margaret Stevenson, a minor—part payment of bequest.....		1,000.00
	Ethel Stevenson, Guardian for Gertrude May Stevenson, a minor,—part payment of bequest.....		1,000.00
	Claudia Tellett—part payment of bequest.....		5,000.00
	Gertrude Larson—Part payment of bequest.....		5,000.00
	Mrs. Logan Roberts, Guardian for Donald Arthur Larson—part payment of bequest.....		1,000.00
	Yakima First National Bank—full payment of assignment to bank, part payment of bequest to Ralph O. Olson, Jr.....		3,000.00
	Mrs. Leilah Nelson—part payment of bequest.....		1,000.00
	Miss Barbara Olson—part payment of bequest.....		1,000.00
Aug. 25	Seattle Title Company—Certificate of foreclosure on A. E. Howard property.....		10.00
Aug. 31	Shirley D. Parker—salary for August, assistant in administration of estate.....		1,000.00
Sept 14	Collector of Internal Revenue—third quarterly payment income tax for 1933—Adelbert E. Larson.....		327.32
	Collector of Internal Revenue—third quarterly payment income tax for 1933—Rose B. Larson.....		327.32
	Rose B. Larson—September allowance.....		1,500.00
Sept 18	Yakima First National Bank—telegram to Shirley Parker by Mr. Hardy and revenue stamps for transfer of Sunshine.....		2.26
Sept 27	John S. Maloney—claim for services.....		3,300.00

Sept 29	Shirley D. Parker—salary for September, assisting in administration of estate.....	1,000.00
27	Mrs. Rose B. Larson—advance.....	10,148.00
Oct. 9	General Insurance Co. of America—balance of first mortgage on Donnelly Hotel Bldg. \$20,000 and interest from 4-10-34 to 10-10-34 @ 5¾%.....	20,575.00
Oct. 11	Mrs. Rose B. Larson—October allowance.....	1,500.00
26	Riggs, Brown & Halverson—advanced for filing fees and sheriff's fees.....	7.90
Oct. 27	Sunnyside Land & Investment Co.—3 yr. renewal \$10,000 insurance on Grandview Bldg. expires 10-12-37 .....	303.00
	Shirley D. Parker—salary for October, assisting in administration of estate.....	1,000.00
	Mrs. Rose B. Larson—November allowance.....	1,500.00
Nov. 13	Claudia Tellett—balance due on bequest less state tax at 3%.....	14,550.00
	Gertrude Larson—balance due on bequest less state tax at 3%.....	14,550.00
	Ethel Stevenson—balance due on bequest less state tax at 3%.....	14,550.00
		<hr/>
		\$221,067.97
	Forward .....	221,067.97
Nov. 13	Mrs. Logan Roberts, Guardian for Donald Arthur Larson—balance due on bequest less state tax 3% .....	8,700.00
	Mrs. Leilah Nelson—balance due on bequest less state tax at 3%.....	8,700.00
	Ethel Stevenson, Guardian for Margaret Stevenson—balance due on bequest less state tax at 3%.....	8,700.00
	Ethel Stevenson, Guardian for Gertrude May Stevenson—balance due on bequest less state tax at 3% .....	8,700.00
	R. M. Hardy—bequest less state tax at 10%.....	4,500.00
	W. H. McCullough—bequest less state tax at 10% .....	900.00
	E. M. Fisher—bequest less state tax at 10%.....	900.00

Nov. 14	Miss Barbara Olson—balance due on bequest less state tax at 3%.....	8,700.00
	Ralph Olson, Jr.—balance of bequest less \$300 note and interest from 8-27-34 to 11-15-34 \$5.27.....	6,394.73
Nov. 19	Mrs. Rose B. Larson—advance.....	8,500.00
	Rigg, Brown & Halverson—on account attorneys fee for handling estate.....	10,000.00
Nov. 27	Shirley D. Parker—salary for November.....	1,000.00
	Mrs. Rose B. Larson—allowance for December.....	1,500.00
	Collector of Internal Revenue—last quarter income tax for 1933—Adelbert E. Larson \$327.29 and Rose B. Larson \$327.29.....	654.58
Nov. 28	Lloyd L. Wiehl—services as appraiser.....	250.00
	Geo. H. Bradshaw—services as appraiser.....	250.00
Dec. 5	Yakima First National Bank—phone call 30¢ and recording fees and revenue stamps, filing fee, documentary stamps on Sunshine stock.....	41.47
Dec 17	Yakima First National Bank—Trust Department—transfer of funds to pay following bequests: Donald Arthur Larson \$9700; Rotary Club for Crippled Children Fund \$15000; Salvation Army \$30,000; Yakima County for T. B. Controll \$100,000; City of Yakima, Art Gallery & Museum \$100,000; total .....	254,700.00
Dec. 18	Mrs. Rose B. Larson—advance.....	2,500.00
	Mrs. Rose B. Larson—advance.....	5,291.00
Dec. 21	Rigg, Brown & Halverson—on account of attorneys fees .....	2,500.00
	Mrs. Rose B. Larson—advance.....	1,435.90
	Mrs. Rose B. Larson—advance.....	800.00
Dec. 24	Yakima First National Bank—on account executor's fees .....	5,000.00
Dec. 31	Shirley D. Parker—salary for December.....	1,000.00
	Mrs. Rose B. Larson—January allowance.....	1,500.00
	Federal tax on checks from 6-14-34 to 12-31-34.....	1.74



1935

Jan. 29—	Shirley D. Parker—salary for January.....	1,000.00
	Mrs. Rose B. Larson—allowance for February.....	1,500.00
Feb. 7	Mrs. Rose B. Larson—advance (Larson-Parker suite)	2,424.36
13	City Treasurer of Yakima, Wash—on account of bequest to public library.....	5,000.00
Feb. 15	Mrs. Rose B. Larson—advance.....	5,000.00
	Treasurer of the State of Washington—state tax on estate .....	28,750.64
	Collector of Internal Revenue—federal tax on estate	56,815.74
Feb. 19	Mrs. Rose B. Larson—advance.....	1,121.25
27	Mrs. Rose B. Larson—allowance for March.....	1,500.00
	Shirley D. Parker—salary for February.....	1,000.00
	Rigg, Brown & Halbersen—phone calls to Miller at Sunnyside, 60¢; Certified copy of will \$1.00; Abstract Co., for certificate of ownership, McCredy property \$10.00 .....	11.60
Mar. 9	Yakima County Treasurer—real estate taxes for 1934 on Burrows Motor Co. Bldg. Lots 27, 28, 29, 30, 31 & 32 in Block 9 Yakima County, \$1,249.63 less 3% rebate \$37.49.....	1,212.14
	Yakima County Treasurer—personal property tax for 1934 \$61.27 less 3% rebate \$1.84.....	59.43
	Yakima County Treas—1934 real estate tax on E 15 ft of Lot 10, Lot 11 & 12 in Block 31 (Larson Bldg.) \$8,635.32 less 3% rebate \$259.06.....	8,376.26
		<hr/>
		\$687,958.81
		[140]
	Forward .....	\$687,958.81
Mar. 9	Town Treasurer of Grandview—irrigation installment for 1935 on Lots 9, 10, 11 in Block 3, Grandview \$1.20 on Lots 7 & 8 in Block 18, Grandview—96¢ total .....	2.16
Mar. 13	Ralph S. Stacy, King County Treas.—to pay 1934 real estate taxes on Larson-Boorman property in full; TL 5 Gov Lot 3; TL 1, Gov Lot 1; TL 2, Gov Lot 2 TL 8, SE¼ of NW¼, Sec. 24, twp 20, Range 9 (½ paid by Boatman).....	59.38



Ben Knox, Benton County Treas.—1934 real estate tax on Benton County property, Larson-Chandler; NW SW less Ry. rtw; N1½ of Lot 6 less Ry. rtw; SE SW less Ry. rtw; Sec. 6, twp 8, Range 28 (Chandler paid one-half) \$2.64 less rebate of 8¢		2.56
Yakima County Treasurer—1934 real estate taxes as follows on: Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 & 10 Yakima Heights Residence Tracts (home) paid one-half, no rebate.....		206.64
Yakima County Treasurer—1934 real estate taxes as follows on: Lots 25, 26, 27, 28 & 29 in Block 51 (Donnelly Hotel) \$3069.18 less 3% rebate \$92.08— \$2,977.10; On Lots 9, 10 & 11 in Block 3, Grandview (Garage Bldg) \$115.92 less 3% rebate \$3.48 and Drainage & Dike tax, \$1.26—total \$113.70; On Lots 7 & 8 in Block 18, Grandview (Store & Office Bldg.) \$218.90 less 3% rebate \$6.57 plus drainage 20¢ \$212.53—total.....		3,303.33
Ralph S. Stacy, King County Treas.—to pay 1934 real estate tax on Lots 29, 30, 31, 32, & 33 in Block 20, Lake Union Shore Lands, \$55.56 less 3% rebate \$1.67—\$53.89; also Lots 27, 28, 29, 30 & 31 in Block 37 Brooklyn Addition \$95.94 less 3% rebate \$2.88—\$93.06; also Lots 36, 37, 38, 39 & 40 in Block 37, Brooklyn Addition \$28.64 less 3% rebate 86¢—\$27.78; total.....		174.73
Mar. 29	Mrs. Rose B. Larson—allowance for April.....	1,500.00
	Shirley D. Parker—salary for March.....	1,000.00
Apr. 1	Mrs. Rose B. Larson—advance.....	20,000.00
	Burrows Motor Company—claim for cash advance made to Mrs. Larson on June 2, 1934.....	200.00
Apr. 3	Mrs. Rose B. Larson—advance.....	2,000.00
Apr. 11	Hull-Miller Company \$5000 insurance on household furniture & furnishings for 3 yrs at 1811 W. Yakima Ave. ....	25.00
Apr. 16	Mrs. Rose B. Larson—advance.....	1,554.05
		<hr/>
		\$717,986.66
		[141]

## DISBURSEMENTS

(Continued)

			717,986.66
April 23	Mayo Clinic—balance in full, professional services		1,000.00
	Ross Dent Insurance Agency, Inc.—Policy No. 4488		
	Hartford Steam Boiler, Donnelly Hotel, expires		
	9-27-37 .....	15.07	
30	Mrs. Rose B. Larson—allowance for May.....	1,500.00	
	S. D. Parker—salary for April.....	1,000.00	
	F. H. Church—on account of fee for compiling in-		
	come tax returns.....	100.00	
May 3	Mrs. Rose B. Larson—advance.....	1,500.00	
4	American District Telegraph Co.—Aero automatic		
	fire alarm on Burrows Motor Company Bldg. from		
	2-1-35 to 1-31-36.....	288.00	
11	Mrs. Rose B. Larson—advance.....	5,000.00	
13	F. H. Church—on account of fee for compiling in-		
	come tax returns.....	200.00	
17	Hull-Miller Company—first year's premium on a		
	three year policy Public Liability at 19-27 So.		
	2nd St. covering building, all premises and ele-		
	vator .....	91.86	
	Rigg, Brown & Halverson—telegram 30¢ and filing		
	fee for final account \$5.00.....	5.30	
22	Ross Dent Insurance Agency, Inc.—additional		
	premium on policy \$4488, adding Burrows Motor		
	Company Bldg. boilers.....	32.81	
27	Collector of Internal Revenue—1934 income tax		
	return and interest, A. E. Larson Estate, (first		
	Quarter) .....	2,228.77	
	Collector of Internal Revenue—1934 income tax		
	return and interest, A. E. Larson (first quarter)	983.87	
29	Mrs. Rose B. Larson—allowance for June.....	1,500.00	
	S. D. Parker—salary for May.....	1,000.00	
	Mrs. Rose B. Larson—advance to pay first quarter		
	of income tax return and interest for 1934.....	808.56	

31	Donnelly Hotel Company—to reimburse for W. P. Fuller & Company bill, ribbed wire skylight, glazed .....	4.70
	Rigg, Brown & Halverson—publishing notice of hearing .....	11.40
June 3	Collector of Internal Revenue—additional federal estate tax .....	29,405.31
5	W. P. Fuller Company—one glazed plate glass for Burrows Motor Company Bldg \$27.50, tax 50¢, total .....	28.00
	Ross Dent Insurance Agency, Inc.—Policy No. P1751 on Larson Bldg. from 5-8-35 to 5-8-38, premium \$910. less return premium by cancelling and re-writing \$710.89 and earned premium dividend credit \$87.14—total credit \$789.03—balance.....	111.97
	Ross Dent Insurance Agency, Inc.—Policy No. P1753 on Burrows Motor Company Bldg. from 5-8-35 to 5-8-38 \$58.00.....	539.98
11	Collector of Internal Revenue—second quarter installment 1934 income tax return, A. E. Larson estate .....	2,201.98
	Collector of Internal Revenue—second quarterly installment 1934 income tax return, Adelbert E. Larson .....	972.11
	F. H. Church—balance due for compiling income tax returns .....	148.75
21	E. McWilliams—appraising Burrows Motor Company Bldg. for insurance.....	20.00
24	Rigg, Brown & Halverson—on account of attorneys' fee .....	10,000.00
	Yakima First National Bank—balance in full for executor's fee .....	10,000.00
	Yakima First National Bank—reimbursing for postage paid out on estate from June 14, 1934 to June 24, 1935.....	3.17
		<hr/>
		\$788,688.27

## RECAPITULATION

Total receipts from June 14, 1934 to June 24, 1935.....	\$812,445.31	
Total disbursements from June 14, 1934 to June 24, 1935.....	\$788,688.27	
Plus balance on hand June 24, 1935.....	23,757.04	812,445.31
Exhibit "C"		

[146]

State of Washington  
County of Yakima—ss:

E. P. Hoffman, being first duly sworn, on oath deposes and says: That he is the trust officer of the Yakima First National Bank, executor above named, and makes this verification for and on its behalf, being authorized so to do; that he has read the within and foregoing Supplemental Report, knows the contents thereof and believes the same to be true.

E. P. HOFFMAN

Subscribed and sworn to before me this 25th day of June, 1935.

NAT U. BROWN

Notary Public in and for the State of Washington,  
residing at Yakima. [143]

## PETITIONER'S EXHIBIT 10

SN-IT-1

Treasury Department  
Internal Revenue Service  
Seattle, Washington  
May 16, 1940

Office of  
Internal Revenue Agent in Charge  
Seattle Division  
350 Federal Office Building

IT:90D:JW

Estate of A. E. Larson,  
Shirley D. Parker,  
Administrator de bonis non,  
Larson Building,  
Yakima, Washington.

Sir:

You are advised that the determination of your income tax liability for the taxable year ended December 31, 1934, discloses a deficiency of \$148,403.81 as shown in the statement attached.

In accordance with the provisions of existing internal revenue laws, notice is hereby given of the deficiency mentioned.

Within 90 days (not counting Sunday or a legal holiday in the District of Columbia as the 90th day) from the date of the mailing of this letter, you may

file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency.

Should you not desire to file a petition, you are requested to execute the enclosed form and forward it to Internal Revenue Agent in Charge, Seattle, Washington, for the attention of IT:90D:JW. The signing and filing of this form will expedite the closing of your return by permitting an early assessment of the deficiency, and will prevent the accumulation of interest, since the interest period terminates 30 days after filing the form, or on the date assessment is made, whichever is earlier.

Respectfully,

GUY T. HELVERING

Commissioner

By GEORGE C. EARLEY

Internal Revenue Agent in  
Charge.

Enclosures:

Statement

Form of Waiver

JW:ecg [147]



## STATEMENT

IT:90D:JW

Estate of A. E. Larson,  
Shirley D. Parker, Administrator de bonis non,  
Larson Building,  
Yakima, Washington

Tax Liability for the Taxable Year Ended  
December 31, 1934

Income Tax

Liability—\$157,211.74

Assessed—\$8,807.93

Deficiency—\$148,403.81

In making this determination of your income tax liability, careful consideration has been given to report of examination dated September 26, 1935, to protest dated November 9, 1935, and to statements made in conferences held December 20, 1935, July 22, 1938, November 28, 1939, December 21, 1938, November 28, 1939, January 10, 1940, and March 22, 1940.

If a petition to the United States Board of Tax Appeals is filed against the deficiency proposed herein, the issue set forth in your claim for refund should be made a part of the petition to be considered by the Board in any redetermination of your tax liability. If a petition is not filed, the claim for refund will be disallowed and official notice *with* be issued by registered mail in accordance with section 1103(a) of the Revenue Act of 1932.

A copy of this letter and statement has been mailed to your representative, H. B. Jones, 610 Colman Building, Seattle, Washington, in accordance with the authority contained in the power of attorney executed by you and on file with the Bureau.

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#### Adjustments to Net Income

Net income as disclosed by return..... \$ 54,693.09

Unallowable deductions and  
additional income:

(a) Profit on sale of Sunshine  
Mining Company stock.....\$230,375.00

(b) Salary Business Agent..... 3,000.00

(c) Executor's Commissions ..... 6,766.59

(d) Dividends ..... 6,740.00

(e) Net rental income understated 2,423.93

(f) Capital gains understated  
and losses disallowed..... 19,905.85

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269,211.37

Net income adjusted..... \$323,904.46

#### Explanation of Adjustments

(a) There is added to the taxable income shown in the return the amount of \$230,375.00, representing the taxable profit on 85,000 shares of Sunshine Mining Company stock sold by the executor during the period June 8 to December 31, 1934. The taxable profit is computed as follows:

Net selling price:

<u>Certificate Number</u>	<u>Shares</u>	<u>Per Share</u>	<u>Total Amount Received</u>
738	5,000	\$5.82½	\$ 29,125.00
1147	10,000	5.82½	58,250.00
601	10,000	6.90	69,000.00
633	10,000	6.90	69,000.00
654	5,000	6.90	34,500.00
736	5,000	6.90	34,500.00
739	5,000	6.90	34,500.00
1346	30,000	6.90	207,000.00
2822	5,000	6.90	34,500.00
	<hr/> 85,000		<hr/> \$570,375.00
Value at date of death—\$4.00 per share.....			340,000.00
Profit received—100% taxable.....			<hr/> \$230,375.00
			[149]

(b) It is held that \$3,000.00 represents reasonable compensation for the services of Mr. Shirley D. Parker for the taxable year 1934. Deducted \$6,000.00; disallowed \$3,000.00.

(c) Executor's commission or fee is chargeable against the corpus of the estate and is not deductible from income.

(d) Dividends from Surety Finance Company were understated in the amount of \$6,740.00.

(e) Net rental income was understated in the amount of \$2,423.03. In computing the net income from this source there was deducted \$1,611.88 as insurance premiums whereas the amount deductible and allocable to the taxable year amounted to

\$646.67; a difference of \$965.21, and the amount deductible as depreciation is held to be \$9,721.28 as against \$11,180.00 deducted; a difference of \$1,-458.72. Total disallowance \$2,423.83.

(f) On line 8 of the return there was deducted \$444.79 as a capital loss and on line 15 there was deducted \$18,837.64 as an ordinary loss. It is held that the losses claimed, totaling \$19,282.43 are not deductible but that capital gains totaling \$623.42 were realized. Income has accordingly, been increased \$19,905.85. Computation of gains is as follows:

Asset	Base	Selling Price	Profit	Percentage Taxable	Taxable
West Side National Bank.....	1/2	3,625.00	0	0	0
	1/2	3,625.00	625.00	40%	250.00
LID 386 .....	1/2	50.00	0		0
	1/2	39.19	10.81	100%	10.81
LID 395 .....	1/2	2,500.00	0		0
	1/2	2,263.18	236.82	100%	236.82
Wapato House & Lot.....	1/2	1,085.23	14.77	100%	14.77
	1/2	961.23	138.77	80%	111.02
Total.....					\$623.42

Get correct amount of rental income from depreciation adjustment.

[150]

Computation of Tax

Net income adjusted.....	\$323,904.46
Less:	
Personal exemption .....	1,000.00
	<hr/>
Balance (surtax net income).....	\$322,904.46
Less:	
Dividends .....	70,047.29
	<hr/>
Net income subject to normal tax.....	\$252,857.17
Normal tax at 4% on \$252,857.17.....	\$ 10,114.29
Surtax on \$322,904.46.....	147,097.45
	<hr/>
Corrected income tax liability.....	\$157,211.74
Income tax assessed:	
Original, Account No. 6-200038.....	8,807.93
	<hr/>
Deficiency of income tax.....	\$148,403.81

[151]

District of Washington

Form 870

Treasury Department

Internal Revenue Service

Revised April 1939

IT:90D:JW

11674-W

Waiver of Restrictions on Assessment and  
Collection of Deficiency in Tax

Pursuant to the provisions of section 272 (d) of the Internal Revenue Code, and/or the corresponding provisions of prior internal revenue laws, the



restrictions provided in section 272 (a) of the Internal Revenue Code, and/or the corresponding provisions of prior internal revenue laws, are hereby waived and consent is given to the assessment and collection of the following deficiency or deficiencies in tax:

Taxable year ended 12/31/1934

Income tax in the sum of \$148,403.81

---

Estate of A. E. Larson  
Shirley D. Parker,  
Administrator de bonis non  
Yakima, Washington

Date.....1940 By..... [152]

TREASURY DEPARTMENT

Bureau of Internal Revenue  
Pacific Division, Technical Staff  
1215 Smith Tower Building  
Seattle, Wash.

Office of  
Commissioner of Internal Revenue

---

Address Reply to  
Head, Pacific Division,  
Technical Staff  
And Refer To

C-TS:PD

S:CRM

June 1, 1940

Mrs. Rose B. Larson,  
Larson, Building,  
Yakima, Washington

Madam:

There is enclosed for your information a copy of a letter addressed to your authorized representative, Mr. H. B. Jones, Sr., Colman Building, Seattle, Washington.

Respectfully,  
VIRGIL BEAN,  
Head, Pacific Division,  
Technical Staff.

Enclosure:

Copy of letter [153]

June 1, 1940

C-TS:PD

S:CRM

Mr. H. B. Jones, Sr.,  
Colman Building  
Seattle, Washington

In re: Mrs. Rose B. Larson,  
Yakima, Washington,  
Income Tax

Docket No: 88813

Year: 1933 and 1934

Sir:

Reference is made to the petition for redetermination of the deficiency now pending before the United States Board of Tax Appeals in the above-entitled case and to conference held in the office of the Pacific Division of the Technical Staff at Seattle, Washington, on March 22, 1940.

Your proposal of settlement has been given careful consideration, but is deemed unacceptable. Accordingly, the case has been referred to Division Counsel for trial before the United States Board of Tax Appeals.

A copy of this letter is being forwarded to the above-named petitioner.

Respectfully,

VIRGIL BEAN,

Head, Pacific Division,  
Technical Staff.

CRM:alm [154]

Office of  
Commissioner of Internal Revenue

Address Reply to	Treasury Department
Head, Pacific Division,	Bureau of Internal
Technical Staff	Revenue
and Refer to	Pacific Division,
C-TS:PD	Technical Staff
S:CRM	1215 Smith Tower
	Building
	Seattle, Wash.

June 1, 1940

Estate of Adelbert E. Larson, Deceased,  
Shirley D. Parker, Administrator de bonis non,  
Larson Building,  
Yakima, Washington

Sir:

There is enclosed for your information a copy of a letter addressed to your authorized representative, Mr. H. B. Jones, Sr., Colman Building, Seattle, Washington.

Respectfully,  
VIRGIL BEAN,  
Head, Pacific Division,  
Technical Staff.

Enclosure:

Copy of letter. [155]

C-TS:PD

June 1, 1940

S:CRM

Mr. H. B. Jones, Sr.,  
Colman Building,  
Seattle, Washington.

In re: Estate of Adelbert E. Larson,  
Yakima, Washington

Docket No: 88814

Taxable year ended December 31, 1933 and  
period January 1 to June 7, 1934

Sir:

Reference is made to the petition for redetermination of the deficiency now pending before the United States Board of Tax Appeals in the above-entitled case and to conference held in the office of the Pacific Division of the Technical Staff at Seattle, Washington, on March 22, 1940.

Your proposal of settlement has been given careful consideration, but is deemed unacceptable; Accordingly, the case has been referred to Division Counsel for trial before the United States Board of Tax Appeals.

A copy of this letter is being forwarded to the above-named petitioner.

Respectfully,

VIRGIL BEAN,

Head, Pacific Division,  
Technical Staff.

CRM:alm [156]

## PETITIONER'S EXHIBIT 11

Called meeting of the Board of Trustees of the Sunshine Mining Company met in the office of the Company, June 2nd, 1934 at 2 P. M.

Messrs Alex Miller, C. M. Hull and I. H. Dills present, a quorum present: Vice President Miller presiding, R. B. Kenyon, Secretary present and acting as such.

Mr. Miller stated that this meeting was called for the reason that due to Mr. Hull leaving for the east this afternoon and the necessity to have a quorum of the Board present for dividend declaration this call is made in conformity with understanding of meeting of May 31st, 1934: And Mr. Miller then called the meeting to order.

Mr. Hull moved the following resolution:

Resolved: That the stock records of the Company be closed to transfer at 5 P. M., June 12th, 1934 and that a dividend of 16¢ per share be paid to all stockholders of record at the close of business June 12th, 1934, said dividend to be payable June 26th, 1934. The transfer books to be re-opened for transfer June 27th, 1934, that the declaration date of this dividend be June 5th, 1934:

Mr. Dills seconded the motion, which was moved unanimously carried and so ordered.

No further business appearing, Mr. Dills moved, Mr. Hull seconded a motion to adjourn subject to



call, moved, carried and so ordered.

/s/ ALEX MILLER,

Vice President.

Attest /s/ R. B. KENYON,

Secretary.

I, Frank M. Hardy, Assistant Secretary, Sunshine Mining Company certify that this is a true and correct copy of the meeting of the Board of Trustees of the Sunshine Mining Company of June 2nd, 1934.

(Seal)

FRANK M. HARDY,

Assistant Secretary. [157]

## COMMUNITY INCOME RETURN

FORM 104 (Must be filed with this return)

## INDIVIDUAL INCOME TAX RETURN

FOR NET INCOME FROM SALARIES OR WAGES OF MORE THAN \$5,000

AND INCOME FROM BUSINESS, PROFESSION, SERVICE, OR SALE OF PROPERTY

## For Calendar Year 1934

Do Not Write in These Spaces

No. 428

6 20037

DIST. OF WASH.

MAY 20 1935

FAD 80856

R.A.L.

BANK, 101-101

Post Office

File This Return Not Later Than the 15th Day of the Third Month Following the Close of the Taxable Year

PRINT NAME AND ADDRESS PLAINLY BELOW

Mrs. Ross B. Larson

1811 West Yakima Avenue

Yakima, Washington

(Print name)

(Print address)

(Print city and state)

(Print occupation)

(Print date of birth)

(Print date of death)

(Print date of marriage)

(Print date of divorce)

(Print date of remarriage)

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## INCOME

(State name and address of employer)

Amount received

Excess paid

(Excess to include in)

1. Salaries, Wages, Commissions, Fees, etc.

of Community Salaries--Sheet 1 Attached

770 02

2. Income (or Loss) from Business or Profession.

of Community Interest

3 072 46

3. Interest on Bank Deposits, Notes, Corporation Bonds, etc.

Interest on Tax-free Covenant Bonds Upon Which a Tax was Paid at Source

4. Income (or Loss) from Partnerships, Syndicates, Pools, etc.

of Partnerships in Profit--Burrows Motor Co.

2 403 09

5. Income from Fiduciaries.

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## DEDUCTIONS

13. Interest Paid

of Community Interest

2 252 23

14. Taxes Paid.

of Community Taxes

279 00

15. Losses by Fire, Storm, etc.

16. Bad Debts.

17. Contributions.

18. Other Deductions Authorized by Law.

19. Total Deductions in Items 13 to 18.

20. Net Income.

31 132 30

## COMPUTATION OF TAX (See Instruction 23)

21. Normal tax (4% of Item 20).

22. Surtax on Item 24.

23. Total tax (Item 20 plus Item 30).

24. Less: Income tax paid at source (7% of Item 6).

25. Income tax paid to a foreign country or U.S. possession.

26. Balance of Tax.

31 195 36



# SCHEDULE A—INCOME (OR LOSS) FROM BUSINESS OR PROFESSION (See Instruction 2)

Total receipts from business or profession (state kind of business)		Gross Business Disbursements	
Cost or Gross Sale		10. Salaries not included as "Labor" in Line 9 (do not deduct compensation for your services)	
Labor	0	11. Interest on business indebtedness to others	
Material and supplies		12. Taxes on business and business property	
Merchandise bought for sale		13. Losses (supplies in table at foot of page)	
Other costs (summarize below or on separate sheet)		14. Bad debts arising from sales or services	
Plus inventory at beginning of year		15. Depreciation, obsolescence, and depletion (supplies in table provided at foot of page)	
TOTAL (Lines 3 to 6)	0	16. Rent, repairs, and other expenses (summarize below or on separate sheet)	
Less inventory at end of year		17. TOTAL (Lines 10 to 16)	0
Net Cost or Gross Sale (Line 7 minus Line 6)	0	18. Total Disbursements (Line 6 plus Line 17)	
Enter "C", or "C or M", on Lines 9 and 8 to indicate whether inventories are valued at cost, or cost or market, whichever is lower.		19. Net Profit (on Loss) (Line 1 minus Line 18) (Enter as Item 3)	0

Explanation of deductions claimed on Lines 5 and 16.

# SCHEDULE B—INCOME FROM RENTS AND ROYALTIES (See Instruction 7)

1. Name of Property	2. Amount Received	3. Cost or Value as of March 1, 1913, Wherever Greater	4. Depreciation (Explain in table at foot of page)	5. Repairs	6. Gross Expenses (Summarize below)	7. Net Profit (Enter as Item 3)
	0	0	0	0	0	0

Explanation of deductions claimed in Column 6.

# SCHEDULE C—CAPITAL GAINS AND LOSSES (See Instruction 3)

1. Description of Property	2. Date Acquired	3. Date Sold or Exchanged	4. Amount Received	5. Cost or March 1, 1913, Value if Acquired Before That Date (Indicate basis)	6. Cost or Improvement Expenditures as of March 1, 1913 (Particular details)	7. Depreciation Allowed (or Allowable) Based on Acquisition as of March 1, 1913 (Particular details)	8. Gain or Loss	9. First-Cost Basis or Fair Market Value as of Date Sold or Exchanged	10. Gain or Loss on or Taken Upon Acquisition
	Mo. Day Year	Mo. Day Year							a. Gains b. Losses
1. 1 year or less:									
2. 1 over 1 year but not over 2 years:								100	0 0
3. 3 over 2 years but not over 5 years:								50	
4. 1 over 5 years but not over 10 years:								00	
5. 1 over 10 years:								60	
								30	

TOTAL GAINS AND LOSSES (Enter net gain or loss as Item 8) (Capital losses are allowable only to the extent of \$2,000 plus capital gains) \$ 0

For net sales or exchanges of capital assets attach separate schedule, if necessary, for transactions coming within each of the 5 periods, and transfer gains and losses for each period to Column 10 above.

For net sales or exchanges of stock, should be reported in detail, including name and address of corporation, class of stock, number of shares, capital changes affecting basis (stock dividends, other non-cash dividends, etc.) (If Personal or business relationship, if any, of purchaser)

# SCHEDULE D—INTEREST ON LIBERTY BONDS AND OTHER OBLIGATIONS OR SECURITIES (See Instruction 9)

1. Description of Securities	2. Amount Owed	3. Interest Received on Account	4. Principal Amount Received from Taxation	5. Amount Owed in Return of Redemption	6. Interest or Amount in Return of Redemption (Enter as Item 3)
Obligations of a State, Territory, or political subdivision thereof, or the District of Columbia, or United States possessions. If obligations issued under Federal Farm Loan Act, or under such Act as amended.		\$ 725.00	All	XXXXXX	XXXXXX
4% and 4½% Bonds and other obligations of United States issued on or before September 1, 1917.			All	XXXXXX	XXXXXX
Treasury Notes, Treasury Bills, and Treasury Certificates of Indebtedness			All	XXXXXX	XXXXXX
4½% and 4% Bonds and Treasury Bonds			All	XXXXXX	XXXXXX
Obligations of instrumentalities of the United States (other than obligations to be reported in (b) above)			\$5,000	0	0
			None		

# SCHEDULE E—INCOME FROM DIVIDENDS

For all dividends received during the year, stating amounts and names and addresses of corporations declaring the dividends:

# SCHEDULE F—EXPLANATION OF DEDUCTIONS CLAIMED IN ITEMS 1, 14, 16, 17, AND 19

Depreciation	100.00	1. 345.00	2. 10.00	3. Mrs. Larson's Return	172.00
Charitable	100.00			Community Chest	1000.00
United Methodist Church	100.00			United Methodist Church	100.00
Presbyterian Church	145.00				



## Schedule "A"

A. E. Larson and Rose B. Larson  
SUMMARY OF COMMUNITY INCOME  
January 1, 1934 to June 7, 1934

	Total	A. E. Larson $\frac{1}{2}$	Rose B. Larson $\frac{1}{2}$
Partnership—Burrows Motor Co.....	4807.99	2404.00	2403.99
Interest—Taxable Sheet No. 1.....	6144.92	3072.46	3072.46
Salaries Sheet No. 1.....	1540.05	770.03	770.02
Interest—Non-taxable Sheet No. 1.....	1589.99	794.99	795.00
Dividends Sheet No. 2.....	63668.87	31834.44	31834.43
Income from Rentals Sheet No. 2.....	(2757.29)	(1378.64)	(1378.65)
Bad Debts Recovered Sheet No. 2.....	10.23	5.16	5.16
	<hr/> 75004.85	<hr/> 37502.44	<hr/> 37502.41



	Total	A. E. Larson 1/2	Rose B. Larson 1/2
Deductions to June 7, 1934			
Taxes—Personal Property .....			
Real Estate .....	62.54		
Benton County .....	409.20		
King County .....	1.48		
Yakima Heights .....	38.01		
	46.96		
	145.00	(172.50)	(172.50)
Donations			
Red Cross .....	100.00		
Crippled Childrens' Fund .....	100.00		
Congregational Church .....			
Business Expense	145.00	(279.10)	(279.09)
Chamber of Commerce .....			
Legal—W. E. Parker .....	20.00	( 10.00)	( 10.00)
	645.13	(322.57)	(322.56)
Interest			
Surety Finance Co. to 6/7/1934 .....	870.19		
Yakima First National Bank to 6/7/34 .....	657.65		
	1527.84	( 763.92)	( 763.92)
		(3096.16)	(1548.07)
			[160]

A. E. Larson and Rose B. Larson

COMMUNITY INCOME JAN. 1, 1934 TO JUNE 7, 1934, INCLUDING INCOME ACCRUED  
IN ESTATE TAX RETURN

	Total	A. E. Larson 1/2	Rose B. Larson 1/2
Partnership Income			
Burrows Motor Co.—Profit.....	4807.99	2404.00	2403.99
Interest			
Naches Court Bonds.....	360.00		
Burrows Motor Co.....	5297.93		
Taxable Interest Accrued in Estate Return.....			
Lovell Mortgage.....	387.57		
Ross Cons. Co. Bonds.....	43.55		
Ralph Olson.....	19.80		
Fred D. Jones.....	36.07		
	6144.92	3072.46	3072.46

	Total	A. E. Larson 1/2	Rose B. Larson 1/2
<b>Salaries</b>			
Sunshine Mining Co.....	1000.00		
Sunshine Mining Co.—Accrued.....	46.67		
Burrows Motor Co.....	400.00		
Burrows Motor Co.—Accrued.....	73.38		
Guaranty Trust Co.—Fees.....	20.00		
	<hr/>		
	1540.05	770.03	770.02
<b>Non-Taxable Interest Accrued in Estate Return</b>			
Imp. Dist. No. 7.....	633.64		
L.I.D. #395 Bonds.....	422.75		
L.I.D. #386 Bonds.....	32.93		
L.I.D. #372 Bonds.....	153.75		
L.I.D. #374 Bonds.....	17.25		
L.I.D. #422 Bonds.....	329.67		
	<hr/>		
	1589.99	794.99	795.00
			[161]

Sheet #2

## A. E. Larson and Rose B. Larson

## COMMUNITY INCOME JAN, 1, 1934 TO JUNE 7, 1934

	Total	A. E. Larson 1/2	Rose B. Larson 1/2
Dividends Received per A. E. Larson Records			
Jan. 1934—Yakima Hardware Co.....	1440.00		
Feb. 1934—Masonic Temple Assn.....	12.00		
Mch. 1934—Wash. Water Power Co.....	6.00		
Mch. 1934—Sunshine Mining Co.....	33755.84		
Apr. 1934—General Insurance Co.....	6.48		
	<hr/>		
Accrued in Estate Return	35220.32		
Sunshine Mining Co.....	25129.46		
West Side Natl. Bank.....	174.47		
Surety Finance Co.....	3140.00		
Washington Water Power Co.....	4.62		
	<hr/>		
	63668.87	31834.44	31834.43

	Total	A. E. Larson 1/2	Rose B. Larson 1/2
Bad Debt Recovered			
Old Grandview Warrant Collected.....	10.32	5.16	5.16
Income from Rentals per Schedules Attached			
O. A. Finch—Wapato—Loss..... ( 6.28)			
Donnelly Hotel Bldg. Profit..... 961.21			
Grandview Motor Co.—Loss..... ( 2.13)			
Grandview Building—Loss..... ( 409.48)			
A. E. Larson Bldg.—Loss..... (3300.61)			
Loss..... (2757.29)	(2757.29)	(1378.64)	(1378.65)
	<u>75004.85</u>	<u>37502.44</u>	<u>37502.41</u>
			[162]

A. E. Larson and Rose B. Larson

COMMUNITY INCOME JAN 1, 1934 TO JUNE 7, 1934

RENTAL INCOME INCLUDING ACCRUED RENT SHOWN IN ESTATE TAX RETURN

		A. E. Larson 1/2	Rose B. Larson 1/2
	<b>Total</b>		
Wapato Building Income			
Rent Received .....	100.00		
Rent Accrued .....	4.67		
	<hr/> 104.67		
Deductions			
Repairs .....	3.80		
Taxes .....	67.90		
Depreciation			
5% on 1800.00 for 5 mos. 7 days.....	39.25		
	<hr/> 110.95		
Loss.....		( 6.28)	(3.14)
		<hr/> ( 6.28)	<hr/> (3.14)
Donnelly Hotel Building Income			
Rent Received .....	8000.00		
Rent Accrued to June 7, 1934.....	373.34		
	<hr/> 8373.34		



	Total	A. E. Larson 1/2	Rose B. Larson 1/2
Deductions			
Insurance .....	196.78		
Insurance Accrued in Estate Return .....	1404.32		
Repairs .....	5.90		
Taxes .....	3038.92		
Depreciation			
Cost 125000.00 at 3% for 5 mos. 7 days.....	1614.60		
Interest Accrued in Estate Tax Return.....	185.29		
Interest Paid—A. E. Larson Record.....	966.32		
	<u>7412.13</u>		
Profit.....	961.21	480.61	480.60
Grandview Motor Co.			
Income—Rent Received .....	200.00		
Rent Accrued to June 7, 1934.....	9.34		
	<u>209.34</u>		
Deductions			
Taxes .....	106.81		
Depreciation			
Cost 6000.00 at 4% for 5 mos. 7 days.....	104.66		
	<u>211.47</u>		
Loss.....	( 2.13)	( 1.06)	( 1.07)

PETITIONERS EXHIBIT 13

In the Superior Court of the State of Washington  
in and for Yakima County.

(In Probate)

No. 8561

In the Matter of the Estate of

A. E. LARSON,

Deceased.

PETITION FOR FAMILY ALLOWANCE

Comes now Rose B. Larson, surviving widow of  
A. E. Larson, deceased, and respectfully represents  
to the court:

1.

That said decedent died on the 7th day of June,  
1934, and that at the time of his death he was a  
resident of Yakima County, State of Washington.

2.

That the Yakima First National Bank was ap-  
pointed executor under the will of the decedent on  
the 13th day of June, 1934, and has qualified and  
entered upon the discharge of its duties as such  
executor.

3.

That no inventory and appraisement has yet been  
made, but that the value of said estate, consisting  
of the community property of the decedent and your  
petitioner, is approximately \$1,500,000.00.

4.

That it is necessary that your petitioner have an  
allowance for her support and maintenance, and

that \$5000.00, cash, and the further sum of \$1500.00 a month, payable monthly, is a reasonable, proper and necessary amount to maintain and support the petitioner and the [164] family residence of the decedent and your petitioner in the manner to which she has been accustomed;

Wherefore, your petitioner prays that she be allowed the sum of \$5000.00 cash, and the further sum of \$1500.00 a month from the date of the death of said decedent, to-wit, from the 7th day of June, 1934, for her support and maintenance and the maintenance of her home, until the further order of the court.

ROSE B. LARSON,  
Petitioner.

State of Washington,  
County of Yakima—ss.

Rose B. Larson, being first duly sworn, on oath deposes and says: That she is the petitioner above named; that she has read the within and foregoing Petition for Family Allowance, knows the contents thereof, and believes the same to be true.

ROSE B. LARSON.

Subscribed and sworn to before me this 14th day of June, 1934.

NAT U. BROWN,  
Notary Public in and for the State of Washington,  
residing at Yakima.

Filed: 6-14-34. [165]

[Title of Superior Court and Cause.]

ORDER FOR FAMILY ALLOWANCE

This matter coming on to be heard upon the petition of Rose B. Larson, surviving widow of decedent, for family allowance, the said petitioner and Yakima First National Bank, executor, both being represented by Rigg, Brown & Halverson, and the court having heard the evidence and being fully advised, it is

Ordered that said executor be and it is hereby authorized and directed to pay to the said petitioner the sum of \$5000.00, cash, and the further sum of \$1500.00, and to pay the sum of \$1500.00, monthly, on the 7th day of each and every month hereafter until the further order of this court for the support and maintenance of said petitioner and for the maintenance of the family residence of petitioner.

Dated this 14th day of June, 1934.

R. B. MILROY,

Court Commissioner [166]

## PETITIONER'S EXHIBIT 14

## CLAIMS AGAINST A. E. LARSON ESTATE

Burrows Motor Co.....	Filed 4/ 4/1935	200.00
John W. Maloney.....		3,300.00
John W. Maloney.....		5,275.00
Burrows Motor Co.....	12/ 7/1934	200.00
“ .....	8/ 1/1934	200.00
Yakima First National Bank	8/ 2/1934	50,106.83
Surety Finance Co.....	8/ 3/1934	43,272.30
Shaw and Sons, Funeral Home	7/31/1934	1,780.00
W. P. Fuller Co.....		9.56
Annavee Flower Shop.....		14.32
H. H. Bowen.....	7/30/1934	22.40
Yakima Medical & Surgical Clinic .....	7/30/1934	3.50
Barnes-Woodin Co. ....	7/30/1934	90.56
Yakima City Creamery.....	7/19/1934	1.60
City Meat Market.....	7/17/1934	3.20
City of Yakima Water Dept.	7/17/1934	3.05
John Dower Lumber Co.....	7/17/1934	5.04
Yakima Hardware Co.....	7/17/1934	17.52
Joseph Yolo .....	7/17/1934	17.50
Pacific Power & Light Co.....	7/17/1934	23.57
Clifton's .....	7/17/1934	4.95
The Swedish Hospital.....	7/17/1934	659.73
St. Elizabeth's Hospital.....	7/17/1934	117.45
R. W. Dent Insurance Agency	7/17/1934	1,146.60
“ .....	7/17/1934	1,404.32
Olga Rod .....	7/17/1934	23.25
Hazel E. Rottles.....	7/17/1934	21.00
French Electric Dye Works..	7/17/1934	5.60
Pacific Telephone & Tele- graph Co. ....	7/17/1934	5.05
Jean McCakren .....	7/17/1934	12.00
City Cleaners & Laundry.....	7/17/1934	14.24
Dorothy Henry Inc.....	7/17/1934	50.75
Drs. Nelson Jacobsen and Okman .....	6/27/1934	1,200.00
Ida E. Metz.....	6/25/1934	27.00
Dr. W. L. Ross, Jr.....	6/25/1934	1,200.00
Parker & Rucker, Attorneys..	6/22/1934	57.49
	6/22/1934	645.13
Mayo Clinic .....	12/18/1934	1,000.00

## RESPONDENT'S EXHIBIT A

June 30, 1934

Yakima First National Bank

Yakima, Washington

Gentlemen :

The undersigned, Yakima First National Bank, a corporation, as the duly appointed, qualified and acting executor of the estate of A. E. Larson, deceased, and Grande, Stolle & Company, a corporation, hand you herewith option agreement dated June 30, 1934, given by said executor in favor of Grande, Stolle & Company, a corporation, together with certificate Nos. 739 and 654, representing 10,000 shares of the capital stock of the Sunshine Mining Company, which certificates are endorsed in blank, and said parties hereby instruct you as follows:

1. The purchase price of said stock is the sum of \$7.00 as set forth in the attached agreement, less a brokerage of 10¢ per share which brokerage the undersigned executor agrees may be deducted from the purchase price as set forth in said attached agreement, making the net amount which you are authorized to receive in full payment from said Grande, Stolle & Company of \$6.90 per share.

2. You are further instructed that upon the payment to you of the purchase price hereinabove set forth, less brokerage, by the Grande, Stolle & Company, a corporation, you are instructed to deliver all or such portion of said deposited stock as may be paid for by said Grande, Stolle & Company, and



you are further authorized that in the event said Grande, Stolle & Company desires to purchase less than the full amount of said stock so deposited, to have said stock transferred upon the books of the Sunshine Mining Company into certificates of such denomination as may be required by said Grande, Stolle & Company, the expense of such transfer to be borne by them.

3. You are further instructed that you are not to allow such stock, or any portion thereof, above described to be withdrawn by said Grande, Stolle & Company unless said company shall fully pay for the same. [168]

You are further instructed that all stock in your possession after the expiration of four months from the date of completion of the listing of the Sunshine Mining Company stock on the New York Curb Exchange or in your possession on the 31st day of December, 1934, at the hour of five o'clock p. m., whichever date occurs first, is to be delivered by you to the undersigned executor.

By E. P. HOFFMAN,

Its Trust Officer,

As the duly appointed, qualified and acting Executor of the Estate of A. E. Larson, deceased.

GRANDE, STOLLE & CO.

By CARL M. STOLLE,

Its Vice-Pres.

The undersigned acknowledges receipt of the above letter and enclosures therein stated this 30th day of June, 1934.

YAKIMA FIRST NATIONAL  
BANK

By F. V. GLAETZNER,  
Asst. Cashier. [169]

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OPTION AGREEMENT

For and in consideration of the sum of One and No/100 Dollars (\$1.00) paid by Grande, Stolle & Company, a Washington corporation, to the Yakima First National Bank, a corporation, as the duly appointed, qualified and acting executor of the estate of A. E. Larson, deceased, receipt of which is hereby acknowledged, the undersigned, said executor, does hereby give and grant unto said Grande, Stolle & Company, a corporation, an option and right to purchase 10,000 shares of capital stock of the Sunshine Mining Company in the sum of \$7.00 per share.

This option shall continue in force and effect from the date hereof until four months after the listing of the stock of Sunshine Mining Company on the New York Curb Exchange and in no event beyond the 31st day of December, 1934, at 5:00 o'clock p. m., and on said date, whichever occurs first, this said option and all rights hereunder shall terminate.

The said undersigned does further agree to deposit said stock, to-wit, 10,000 shares, in escrow with the Yakima First National Bank of Yakima, Washington, with instructions to said bank to surrender all or any portion thereof to Grande, Stolle & Company, a corporation, upon its payment to said bank for the account of said Yakima First National Bank, a corporation, as executor, the purchase price per share above set out, the expense of said eecrow to be borne by Grande, Stolle & Company, a corporation.

It is understood that during the life of this said option the undersigned agrees that it will not sell or dispose of any of its stock now owned in the Sunshine Mining Company, a corporation, except that during the life of this said option [170] said undersigned may sell not to exceed one thousand (1000) shares of its said stock, provided that said Grande, Stolle & Company, a corporation, shall have the first right of refusal of said stock, should the undersigned elect to sell said one thousand shares, or any part thereof.

It is understood that this option is subject to the said Grande, Stolle & Company, a corporation, appointing an engineer, receiving said engineer's report on said Sunshine Mining Company's properties and completing the listing of the stock of said Sunshine Mining Company upon the New York Curb Exchange, and this option shall become null and void and of no force and effect in the event the appointment of said engineer, his report and the

listing of said stock upon the New York Curb Exchange shall not be completed on or before the first day of September, 1934.

It is understood that in the event said engineer is appointed, his report made, and said listing completed on or before the first day of September, 1934, then in that event this option shall continue in full force and effect for a period of four months from the date of listing said stock on the New York Curb Exchange and not later than the 31st day of December, 1934, at the hour of 5 o'clock p. m., whichever date occurs first and thereafter this agreement shall be null and void.

Dated this 30th day of June, 1934.

YAKIMA FIRST NATIONAL  
BANK

By E. P. HOFFMAN

Trust Officer,

Executor of the Estate of A.  
E. Larson, deceased.

Accepted this 30th day of June, 1934.

GRANDE, STOLLE &

COMPANY, a corporation

By CARL M. STOLLE

Vice President. [171]

## CERTIFICATE

State of Washington,  
County of Yakima—ss:

I, Walter J. Funk, Liquidating Agent of the Yakima First National Bank, do hereby certify that the attached and foregoing Option Agreement, dated June 30th, 1934, between Yakima First National Bank, as Executor of the Estate of A. E. Larson, deceased, and Grande, Stolle & Company, a Washington corporation, for 10,000 shares of the capital stock of the Sunshine Mining Company, together with letter under the same date from Yakima First National Bank, Executor of the Estate of A. E. Larson, deceased, to the Yakima First National Bank, are true and complete copies of the originals thereof, which are in possession of and were surrendered to the undersigned as such Liquidating Agent, and are a part of the permanent records and files of the Yakima First National Bank now in possession of the undersigned Liquidating Agent.

Dated at Yakima, Washington, this 8th day of November, 1940.

(Seal)

WALTER J. FUNK

Liquidating Agent of the  
Yakima First National Bank.

[172]

June 30, 1934

Yakima First National Bank

Yakima, Washington

Gentlemen:

The undersigned, Yakima First National Bank, a corporation, as the duly appointed, qualified and acting executor of the estate of A. E. Larson, deceased, and Grande, Stolle & Company, a corporation, hand you herewith option agreement dated June 30, 1934, given by said executor in favor of Grande, Stolle & Company, a corporation, together with certificate No. 633, representing 10,000 shares of the capital stock of the Sunshine Mining Company, which certificate is endorsed in blank, and said parties hereby instruct you as follows:

1. The purchase price of said stock is the sum of \$7.00 as set forth in the attached agreement, less a brokerage of 10¢ per share which brokerage the undersigned executor agrees may be deducted from the purchase price as set forth in said attached agreement, making the net amount which you are authorized to receive in full payment from said Grande, Stolle & Company of \$6.90 per share.

2. You are further instructed that upon the payment to you of the purchase price hereinabove set forth, less brokerage, by the Grande, Stolle & Company, a corporation, you are instructed to deliver all or such portion of said deposited stock as may be paid for by said Grande, Stolle & Company, and you are further authorized that in the event said Grande, Stolle & Company desires to purchase less



than the full amount of said stock so deposited, to have said stock transferred upon the books of the Sunshine Mining Company into certificates of such denomination as may be required by said Grande, Stolle & Company, the expense of such transfer to be borne by them.

3. You are further instructed that you are not to allow such stock, or any portion thereof, above described to be withdrawn by said Grande, Stolle & Company unless said company shall fully pay for the same. [173]

You are further instructed that all stock in your possession after the expiration of four months from the date of completion of the listing of the Sunshine Mining Company stock on the New York Curb Exchange or in your possession on the 31st day of December, 1934, at the hour of five o'clock p. m., whichever date occurs first, is to be delivered by you to the undersigned executor.

YAKIMA FIRST NATIONAL BANK

By E. P. HOFFMAN

Its Trust Officer

As the duly appointed, qualified and acting Executor of the Estate of A. E. Larson, deceased.

GRANDE, STOLLE & CO.

By CARL M. STOLLE

Its Vice-Pres.

The undersigned acknowledges receipt of the above letter and enclosures therein stated this 30th day of June, 1934.

YAKIMA FIRST NATIONAL BANK

By F. V. GLAETZNER

Asst. Cashier [174]

## OPTION AGREEMENT

For and in consideration of the sum of One and No/100 Dollars (\$.100) paid by Grande, Stolle & Company, a Washington corporation, to the Yakima First National Bank, a corporation, as the duly appointed, qualified and acting executor of the estate of A. E. Larson, deceased, receipt of which is hereby acknowledged, the undersigned, said executor, does hereby give and grant unto said Grande, Stolle & Company, a corporation, an option and right to purchase 10,000 shares of capital stock of the Sunshine Mining Company in the sum of \$7.00 per share.

This option shall continue in force and effect from the date hereof until four months after the listing of the stock of Sunshine Mining Company on the New York Curb Exchange and in no event beyond the 31st day of December, 1934, at 5:00 o'clock p. m., and on said date, whichever occurs first, this said option and all rights hereunder shall terminate.

The said undersigned does further agree to deposit said stock, to-wit, 10,000 shares, in escrow with the Yakima First National Bank of Yakima, Washington, with instructions to said bank to surrender all or any portion thereof to Grande, Stolle & Company, a corporation, upon its payment to said bank for the account of said Yakima First National Bank, a corporation, as executor, the purchase price per share above set out, the expense of said escrow to be borne by Grande, Stolle & Company, a corporation.

It is understood that during the life of this said

option the undersigned agrees that it will not sell or dispose of any of its stock now owned in the Sunshine Mining Company, a corporation, except that during the life of this said option [175] said undersigned may sell not to exceed one thousand (1000) shares of its said stock, provided that said Grande, Stolle & Company, a corporation, shall have the first right of refusal of said stock, should the undersigned elect to sell said one thousand shares, or any part thereof.

It is understood that this option is subject to the said Grande, Stolle & Company, a corporation, appointing an engineer, receiving said engineer's report on said Sunshine Mining Company's properties and completing the listing of the stock of said Sunshine Mining Company upon the New York Curb Exchange, and this option shall become null and void and of no force and effect in the event the appointment of said engineer, his report and the listing of said stock upon the New York Curb Exchange shall not be completed on or before the first day of September, 1934.

It is understood that in the event said engineer is appointed, his report made, and said listing completed on or before the first day of September, 1934, then in that event this option shall continue in full force and effect for a period of four months from the date of listing said stock on the New York Curb Exchange and not later than the 31st day of December, 1934, at the hour of 5 o'clock p. m., whichever

date occurs first and thereafter this agreement shall be null and void.

Dated this 30th day of June, 1934.

YAKIMA FIRST NATIONAL BANK

By E. P. HOFFMAN

Trust Officer

Executor of the Estate of A. E.  
Larson, deceased.

Accepted this 30th day of June, 1934.

GRANDE, STOLLE & COMPANY,  
a corporation,

By CARL M. STOLLE, V. P. [176]

### CERTIFICATE

State of Washington,  
County of Yakima—ss:

I, Walter J. Funk, Liquidating Agent of the Yakima First National Bank, do hereby certify that the attached and foregoing Option Agreement, dated June 30th, 1934, between Yakima First National Bank, as Executor of the Estate of A. E. Larson, deceased, and Grande, Stolle & Company, a Washington corporation, for 10,000 shares of the capital stock of the Sunshine Mining Company, together with letter under the same date from Yakima First National Bank, Executor of the Estate of A. E. Larson, deceased, to the Yakima First National Bank, are true and complete copies of the originals thereof, which are in possession of and

were surrendered to the undersigned as such Liquidating Agent, and are a part of the permanent records and files of the Yakima First National Bank now in possession of the undersigned Liquidating Agent.

Dated at Yakima, Washington, this 8th day of November, 1940.

WALTER J. FUNK

Liquidating Agent of the  
Yakima First National Bank.

[177]

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June 30, 1934

Yakima First National Bank  
Yakima, Washington

Gentlemen:

The undersigned, Yakima First National Bank, a corporation, as the duly appointed, qualified and acting executor of the estate of A. E. Larson, deceased, and Grande, Stolle & Company, a corporation, hand you herewith option agreement dated June 30, 1934, given by said executor in favor of Grande, Stolle & Company, a corporation, together with certificate No. 601, representing 10,000 shares of the capital stock of the Sunshine Mining Company, which certificate is endorsed in blank, and said parties hereby instruct you as follows:

1. The purchase price of said stock is the sum of \$7.00 as set forth in the attached agreement, less a brokerage of 10¢ per share which brokerage the



undersigned executor agrees may be deducted from the purchase price as set forth in said attached agreement, making the net amount which you are authorized to receive in full payment from said Grande, Stolle & Company of \$6.90 per share.

2. You are further instructed that upon the payment to you of the purchase price hereinabove set forth, less brokerage, by the Grande, Stolle & Company, a corporation, you are instructed to deliver all or such portion of said deposited stock as may be paid for by said Grande, Stolle & Company, and you are further authorized that in the event said Grande, Stolle & Company desires to purchase less than the full amount of said stock so deposited, to have said stock transferred upon the books of the Sunshine Mining Company into certificates of such denomination as may be required by said Grande, Stolle & Company, the expense of such transfer to be borne by them.

3. You are further instructed that you are not to allow such stock, or any portion thereof, above described to be withdrawn by said Grande, Stolle & Company unless said company shall fully pay for the same. [178]

4. You are further instructed that all stock in your possession after the expiration of four months from the date of completion of the listing of the Sunshine Mining Company stock on the New York Curb Exchange or in your possession on the 31st day of December, 1934, at the hour of five o'clock



p.m., whichever date occurs first, is to be delivered by you to the undersigned executor.

YAKIMA FIRST NATIONAL  
BANK

By: E. P. HOFFMAN

Its Trust Officer

As the duly appointed, qualified and acting executor of the estate of A. E. Larson, deceased.

GRANDE, STOLLE & CO.

By: CARL M. STOLLE

Its Vice-Pres.

The undersigned acknowledges receipt of the above letter and enclosures therein stated this 30th day of June, 1934.

YAKIMA FIRST NATIONAL  
BANK

By F. V. GLAETZNER

Asst. Cashier [179]

OPTION AGREEMENT

For and in consideration of the sum of One and No/100 Dollars (\$1.00) paid by Grande, Stolle & Company, a Washington corporation, to the Yakima First National Bank, a corporation, as the duly appointed, qualified and acting executor of the estate of A. E. Larson, deceased, receipt of which is hereby acknowledged, the undersigned, said executor, does hereby give and grant unto said Grande,

Stolle & Company, a corporation, an option and right to purchase 10,000 shares of capital stock of the Sunshine Mining Company in the sum of \$7.00 per share.

This option shall continue in force and effect from the date hereof until four months after the listing of the stock of Sunshine Mining Company on the New York Curb Exchange and in no event beyond the 31st day of December, 1934, at 5:00 o'clock p.m., and on said date, whichever occurs first, this said option and all rights hereunder shall terminate.

The said undersigned does further agree to deposit said stock, to-wit, 10,000 shares, in escrow with the Yakima First National Bank of Yakima, Washington, with instructions to said bank to surrender all or any portion thereof to Grande, Stolle & Company, a corporation, upon its payment to said bank for the account of said Yakima First National Bank, a corporation, as executor, the purchase price per share above set out, the expense of said escrow to be borne by Grande, Stolle & Company, a corporation.

It is understood that during the life of this said option the undersigned agrees that it will not sell or dispose of any of its stock now owned in the Sunshine Mining Company, a corporation, except that during the life of this said option [180] said undersigned may sell not to exceed one thousand (1000) shares of its said stock, provided that said Grande, Stolle & Company, a corporation, shall have the first right of refusal of said stock, should the

undersigned elect to sell said one thousand shares, or any part thereof.

It is understood that this option is subject to the said Grande, Stolle & Company, a corporation, appointing an engineer, receiving said engineer's report on said Sunshine Mining Company's property and completing the listing of the stock of said Sunshine Mining Company upon the New York Curb Exchange, and this option shall become null and void and of no force and effect in the event the appointment of said engineer, his report and the listing of said stock upon the New York Curb Exchange shall not be completed on or before the first day of September, 1934.

It is understood that in the event said engineer is appointed, his report made, and said listing completed on or before the first day of September, 1934, then in that event this option shall continue in full force and effect for a period of four months from the date of listing said stock on the New York Curb Exchange and not later than the 31st day of December, 1934, at the hour of 5 o'clock p.m., whichever date occurs first and thereafter this agreement shall be null and void.

Dated this 30th day of June, 1934.

YAKIMA FIRST NATIONAL  
BANK

By E. P. HOFFMAN

Trust Officer

Executor of the estate of A. E.  
Larson, deceased.

Accepted this 30th day of June, 1934.

GRANDE, STOLLE & COMPANY, a corporation.

By CARL M. STOLLE, V. P. [181]

CERTIFICATE

State of Washington,  
County of Yakima—ss.

I, Walter J. Funk, Liquidating Agent of the Yakima First National Bank, do hereby certify that the attached and foregoing Option Agreement, dated June 30th, 1934, between Yakima First National Bank, as Executor of the Estate of A. E. Larson, deceased, and Grande, Stolle & Company, a Washington corporation, for 10,000 shares of the capital stock of the Sunshine Mining Company, together with letter under the same date from Yakima First National Bank, Executor of the Estate of A. E. Larson, deceased, to the Yakima First National Bank, are true and complete copies of the originals thereof, which are in possession of and were surrendered to the undersigned as such Liquidating Agent, and are a part of the permanent records and files of the Yakima First National Bank now in possession of the undersigned Liquidating Agent.

Dated at Yakima, Washington, this 8th day of November, 1940.

WALTER J. FUNK

Liquidating Agent of the Yakima  
First National Bank. [182]

June 30, 1934

Yakima First National Bank  
Yakima, Washington

Gentlemen:

The undersigned, Yakima First National Bank, a corporation, as the duly appointed, qualified and acting executor of the estate of A. E. Larson, deceased, and Grande, Stolle & Company, a corporation, hand you herewith option agreement dated June 30, 1934, given by said executor in favor of Grande, Stolle & Company, a corporation, together with certificate Nos. 736 and 2822, representing 10,000 shares of the capital stock of the Sunshine Mining Company, which certificates are endorsed in blank, and said parties hereby instruct you as follows:

1. The purchase price of said stock is the sum of \$7.00 as set forth in the attached agreement, less a brokerage of 10¢ per share which brokerage the undersigned executor agrees may be deducted from the purchase price as set forth in said attached agreement, making the net amount which you are authorized to receive in full payment from said Grande, Stolle & Company of \$6.90 per share.

2. You are further instructed that upon the payment to you of the purchase price hereinabove set forth, less brokerage, by the Grande, Stolle & Company, a corporation, you are instructed to deliver all or such portion of said deposited stock as may be paid for by said Grande, Stolle & Company,



and you are further authorized that in the event said Grande, Stolle & Company desires to purchase less than the full amount of said stock so deposited, to have said stock transferred upon the books of the Sunshine Mining Company into certificates of such denomination as may be required by said Grande, Stolle & Company, the expense of such transfer to be borne by them.

3. You are further instructed that you are not to allow such stock, or any portion thereof, above described to be withdrawn by said Grande, Stolle & Company unless said company shall fully pay for the same. [183]

You are further instructed that all stock in your possession after the expiration of four months from the date of completion of the listing of the Sunshine Mining Company stock on the New York Curb Exchange or in your possession on the 31st day of December, 1934, at the hour of five o'clock p.m., whichever date occurs first, is to be delivered by you to the undersigned executor.

YAKIMA FIRST NATIONAL  
BANK

By E. P. HOFFMAN

Its Trust Officer as the duly  
appointed, qualified and acting  
Executor of the Estate of A.  
E. Larson, deceased.

GRANDE, STOLLE & CO.

By: CARL M. STOLLE

Its Vice-Pres.



The undersigned acknowledges receipt of the above letter and enclosures therein stated this 30th day of June, 1934.

YAKIMA FIRST NATIONAL  
BANK

By F. V. GLAETZNER

Asst. Cashier [184]

OPTION AGREEMENT

For and in consideration of the sum of One and No/100 Dollars (\$1.00) paid by Grande, Stolle & Company, a Washington corporation, to the Yakima First National Bank, a corporation, as the duly appointed, qualified and acting executor of the estate of A. E. Larson, deceased, receipt of which is hereby acknowledged, the undersigned, said executor, does hereby give and grant unto said Grande, Stolle & Company, a corporation, an option and right to purchase 10,000 shares of capital stock of the Sunshine Mining Company in the sum of \$7.00 per share.

This option shall continue in force and effect from the date hereof until four months after the listing of the stock of Sunshine Mining Company on the New York Curb Exchange and in no event beyond the 31st day of December, 1934, at 5:00 o'clock p.m., and on said date, whichever occurs first, this said option and all rights hereunder shall terminate.

The said undersigned does further agree to deposit said stock, to-wit, 10,000 shares, in escrow with

the Yakima First National Bank of Yakima, Washington, with instructions to said bank to surrender all or any portion thereof to Grande, Stolle & Company, a corporation, upon its payment to said bank for the account of said Yakima First National Bank, a corporation, as executor, the purchase price per share above set out, the expense of said escrow to be borne by Grande, Stolle & Company, a corporation.

It is understood that during the life of this said option the undersigned agrees that it will not sell or dispose of any of its stock now owned in the Sunshine Mining Company, a corporation, except that during the life of this said option said undersigned may sell not to exceed one thousand (1000)

[185]

shares of its said stock, provided that said Grande, Stolle & Company, a corporation, shall have the first right of refusal of said stock, should the undersigned elect to sell said one thousand shares, or any part thereof.

It is understood that this option is subject to the said Grande, Stolle & Company, a corporation, appointing an engineer, receiving said engineer's report on said Sunshine Mining Company's properties and completing the listing of the stock of said Sunshine Mining Company upon the New York Curb Exchange, and this option shall become null and void and of no force and effect in the event the appointment of said engineer, his report and the listing of said stock upon the New York Curb Ex-

change shall not be completed on or before the first day of September, 1934.

It is understood that in the event said engineer is appointed, his report made, and said listing completed on or before the first day of September, 1934, then in that event this option shall continue in full force and effect for a period of four months from the date of listing said stock on the New York Curb Exchange and not later than the 31st day of December, 1934, at the hour of 5 o'clock p.m., whichever date occurs first and thereafter this agreement shall be null and void.

Dated this 30th day of June, 1934.

YAKIMA FIRST NATIONAL  
BANK

By E. P. HOFFMAN

Trust Officer

Executor of the Estate of A. E.  
Larson, deceased.

Accepted this 30th day of June, 1934.

GRANDE, STOLLE &  
COMPANY,

a corporation.

By CARL M. STOLLE V. P. [186]

## CERTIFICATE

State of Washington

County of Yakima—ss.

I, Walter J. Funk, Liquidating Agent of the Yakima First National Bank, do hereby certify that the attached and foregoing Option Agreement, dated June 30th, 1934, between Yakima First National Bank, as Executor of the Estate of A. E. Larson, deceased, and Grande, Stolle & Company, a Washington corporation, for 10,000 shares of the capital stock of the Sunshine Mining Company, together with letter under the same date from Yakima First National Bank, Executor of the Estate of A. E. Larson, deceased, to the Yakima First National Bank, are true and complete copies of the originals thereof, which are in possession of and were surrendered to the undersigned as such Liquidating Agent, and are a part of the permanent records and files of the Yakima First National Bank now in possession of the undersigned Liquidating Agent.

Dated at Yakima, Washington, this 8th day of November, 1940.

WALTER J. FUNK

Liquidating Agent of the Yakima First National Bank.

[187]

June 30th, 1934

Yakima First National Bank  
Yakima, Washington

Gentlemen:

The undersigned, Yakima First National Bank, a corporation, as the duly appointed, qualified and acting executor of the estate of A. E. Larson, deceased, and Grande, Stolle & Company, a corporation, hand you herewith option agreement dated June 30, 1934, given by said executor in favor of Grande, Stolle & Company, a corporation, together with certificate No. 1346, representing 30,000 shares of the capital stock of the Sunshine Mining Company, which certificate is endorsed in blank, and said parties hereby instruct you as follows:

1. The purchase price of said stock is the sum of \$7.00 as set forth in the attached agreement, less a brokerage of 10¢ per share which brokerage the undersigned executor agrees may be deducted from the purchase price as set forth in said attached agreement, making the net amount which you are authorized to receive in full payment from said Grande, Stolle & Company of \$6.90 per share.

2. You are further instructed that upon the payment to you of the purchase price hereinabove set forth, less brokerage, by the Grande, Stolle & Company, a corporation, you are instructed to deliver all or such portion of said deposited stock as may be paid for by said Grande, Stolle & Company, and you are further authorized that in the event said

Grande, Stolle & Company desires to purchase less than the full amount of said stock so deposited, to have said stock transferred upon the books of the Sunshine Mining Company into certificates of such denomination as may be required by said Grande, Stolle & Company, the expense of such transfer to be borne by them.

3. You are further instructed that you are not to allow such stock, or any portion thereof, above described to be withdrawn by said Grande, Stolle & Company unless said company shall fully pay for the same. [188]

4. You are further instructed that all stock in your possession after the expiration of four months from the date of completion of the listing of the Sunshine Mining Company stock on the New York Curb Exchange or in your possession on the 31st day of December, 1934, at the hour of five o'clock p.m., whichever date occurs first, is to be delivered by you to the undersigned executor.

YAKIMA FIRST NATIONAL  
BANK

By E. P. HOFFMAN

Its Trust Officer

As the duly appointed, qualified  
and acting executor of the es-  
tate of A. E. Larson, de-  
ceased.

GRANDE, STOLLE & CO.

By: CARL M. STOLLE

Its Vice-Pres.



The undersigned acknowledges receipt of the above letter and enclosures therein stated this 30th day of June, 1934.

YAKIMA FIRST NATIONAL  
BANK

By F. V. GLAETZNER  
Asst. Cashier [189]

OPTION AGREEMENT

For and in consideration of the sum of One and No/100 Dollars (\$1.00) paid by Grande, Stolle & Company, a Washington corporation, to the Yakima First National Bank, a corporation, as the duly appointed, qualified and acting executor of the estate of A. E. Larson, deceased, receipt of which is hereby acknowledged, the undersigned, said executor, does hereby give and grant unto said Grande, Stolle & Company, a corporation, an option and right to purchase 30,000 shares of capital stock of the Sunshine Mining Company in the sum of \$7.00 per share.

This option shall continue in force and effect from the date hereof until four months after the listing of the stock of Sunshine Mining Company on the New York Curb Exchange and in no event beyond the 31st day of December, 1934, at 5:00 o'clock p.m., and on said date, whichever occurs first, this said option and all rights hereunder shall terminate.

The said undersigned does further agree to deposit said stock, to-wit, 30,000 shares, in escrow with

the Yakima First National Bank of Yakima, Washington, with instructions to said bank to surrender all or any portion thereof to Grande, Stolle & Company, a corporation, upon its payment to said bank for the account of said Yakima First National Bank, a corporation, as executor, the purchase price per share above set out, the expense of said escrow to be borne by Grande, Stolle & Company, a corporation.

It is understood that during the life of this said option the undersigned agrees that it will not sell  
[190]

or dispose of any of its stock now owned in the Sunshine Mining Company, a corporation, except that during the life of this said option said undersigned may sell not to exceed one thousand (1000) shares of its said stock, provided that said Grande, Stolle & Company, a corporation, shall have the first right of refusal of said stock, should the undersigned elect to sell said one thousand shares, or any part thereof.

It is understood that this option is subject to the said Grande, Stolle & Company, a corporation, appointing an engineer, receiving said engineer's report on said Sunshine Mining Company's property and completing the listing of the stock of said Sunshine Mining Company upon the New York Curb Exchange, and this option shall become null and void and of no force and effect in the event the appointment of said engineer, his report and the listing of said stock upon the New York Curb Exchange shall not be completed on or before the first day of September, 1934.

It is further understood that in the event said engineer is appointed, his report made, and said listing completed on or before the first day of September, 1934, then in that event this option shall continue in full force and effect for a period of four months from the date of listing said stock on the New York Curb Exchange and not later than the 31st day of December, 1934, at the hour of 5 o'clock p.m., whichever date occurs first and thereafter this agreement shall be null and void.

Dated this 30th day of June, 1934.

YAKIMA FIRST NATIONAL  
BANK

By E. P. HOFFMAN

Trust Officer

Executor of the Estate of A. E.  
Larson, deceased.

Accepted this 30th day of June, 1934.

GRANDE, STOLLE &  
COMPANY,

a corporation.

By CARL M. STOLLE V. P. [191]

## CERTIFICATE

State of Washington

County of Yakima—ss.

I, Walter J. Funk, Liquidating Agent of the Yakima First National Bank, do hereby certify that the attached and foregoing Option Agreement, dated June 30th, 1934, between Yakima First National Bank, as Executor of the Estate of A. E. Larson, deceased, and Grande, Stolle & Company, a Washington corporation, for 30,000 shares of the capital stock of the Sunshine Mining Company, together with letter under the same date from Yakima First National Bank, Executor of the Estate of A. E. Larson, deceased, to the Yakima First National Bank, are true and complete copies of the originals thereof, which are in possession of and were surrendered to the undersigned as such Liquidating Agent, and are a part of the permanent records and files of the Yakima First National Bank now in possession of the undersigned Liquidating Agent.

Dated at Yakima, Washington, this 8th day of November, 1940.

WALTER J. FUNK

Liquidating Agent of the Yakima First National Bank.

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## RESPONDENT'S EXHIBIT B

Filed 2/27/35

In the Superior Court of the State of Washington,  
In and for Yakima County.

No. 8561

In the Matter of the Estate of A. E. LARSON,  
Deceased.

## PETITION TO SELL PERSONAL PROPERTY

Comes now the Yakima First National Bank,  
and respectfully shows to the Court as follows,  
to-wit

## 1.

That it is the duly appointed, qualified and acting executor of the above entitled estate.

## 2.

That no inventory has yet been filed herein, but that included amongst the assets of said estate are 210,974 shares of stock of the Sunshine Mining Company.

## 3.

That your petitioner has received an offer from Grande, Stolle & Company, a corporation, for the purchase of 10,000 shares of said stock at a net return to said estate of  $\$5.82\frac{1}{2}\%$  per share, payment to be made therefor as follows, to-wit: \$2.00 per share on or before the 1st day of September, 1934, and the balance of said purchase price, to-wit,  $\$3.82\frac{1}{2}$  on or before the 15th day of December,

1934. And in connection therewith and as a part of said offer the said Grande, Stolle & Company desires to have an option for the purchase of 70,000 additional shares of said stock at the price to net the estate \$6.90 per share, said option to be taken up not later than the 31st day of December, 1934. [193]

## 4.

That while said stock has not yet been appraised your petitioner believes that said offer is a fair and reasonable one for said stock and that it is to the best interest of said estate that said offer be accepted and said option be granted, and that your petitioner be authorized to make and execute the necessary papers to carry out said agreement.

## 5.

That it is necessary that same part of the personal property of said estate be sold to pay the specific bequests provided in the will herein, and that your petitioner believes that said offer of the Grande, Stolle & Company is the best offer that could be received for a portion of said stock in the Sunshine Mining Company;

Wherefore, your petitioner prays for an order authorizing your petitioner to enter into such necessary contracts and agreements as to carry said offer into effect and ratifying and approving all steps that your petitioner has heretofore taken pursuant thereto.

RIGG, BROWN & HALVERSON  
Attorneys for Petitioner



State of Washington,  
County of Yakima—ss.

E. P. Hoffman, being first duly sworn, on oath deposes and says: That he is the trust officer of Yakima First National Bank, Petitioner above named, and makes this verification for and on its behalf, being authorized so to do; that he has read the within and foregoing Petition to Sell Personal Property, knows the contents thereof and believes the same to be true.

E. P. HOFFMAN

Subscribed and sworn to before me this 26th day  
of July, 1934.

s.s.

NAT U. BROWN

Notary Public for Washington,  
residing at Yakima therein.

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RESPONDENT'S EXHIBIT C

In the Superior Court of the State of Washington,  
In and for Yakima County.

No. 8561

In the Matter of the Estate of A. E. LARSON,  
Deceased.

ORDER AUTHORIZING SALE OF PERSONAL  
PROPERTY

This matter coming on to be heard upon the petition of the Yakima First National Bank as executor herein for authority to sell 10,000 shares of the capital stock of the Sunshine Mining Company to Grande, Stolle & Company to net the estate \$5.82½ and to grant to the said Grande, Stolle & Company an option to purchase 70,000 additional shares of said capital stock to net the said estate \$6.90, the executor being represented by its counsel, Rigg, Brown & Halverson, and Rose Larson, the surviving widow and residuary legatee, being represented by her agent, Shirley Parker, and the court having heard the evidence of R. M. Hardy and Alex Miller and being fully advised in the premises;

Now therefore, it is ordered that the executor be and it is hereby authorized to carry out such agreement of sale to said Grande, Stolle & Company as outlined in said petition; and it is further

Ordered that all acts of said executor heretofore

done in connection therewith are hereby fully and completely ratified and approved.

Dated this 26th day of July, 1934

R. B. MILROY

Court Commissioner [195]

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## RESPONDENT'S EXHIBIT D

### LAST WILL AND TESTAMENT OF A. E. LARSON

In the name of God, amen, I, A. E. Larson of the City of Yakima, in the County of Yakima, State of Washington, of the age of 71 years, and being of sound and disposing mind and memory and not acting under duress, menace, fraud or undue influence of any person, whatsoever, do make, publish and declare this my Last Will and Testament, in the manner following, that is to say:

First: I direct that my body be cared for as my wife wishes.

Second: I direct that my executor, hereinafter named, as soon as sufficient funds are available, pay my just debts and taxes.

Third: I give, bequeath and devise to each of my three sisters, viz Claudia Tellett, Gertrude Larson, and Ethel Stevenson, if living at the time of my death, the sum of Twenty Thousand Dollars, to have and to hold the same and their heirs forever.

Fourth: I give, bequeath and devise to each one of my nephews and neices, viz Donald Arthur Lar-

son, Ralph Olson, Jr., Barbara Olson, Mrs. Leilah Nelson, Margaret Stevenson, Gertrude May Stevenson, if living at the time of my death, the sum of Ten Thousand Dollars, to have and to hold the same and their heirs forever.

Fifth: I give, bequeath and devise to my nephew Donald Arthur Larson, if living at the time of my death, an additional sum to Paragraph 4, of Ten Thousand Dollars, to be held in trust by the Yakima First National Bank, until he becomes thirty years of age. The income from said sum to be paid to him annually.

Sixth: I give, bequeath and devise to Grover Burrows, the sum of Ten Thousand Dollars, to have and to hold the same and his heirs forever, in appreciation of a kind, faithful friend and a long-time and efficient business partner.

Seventh: I give, bequeath and devise to R. M. Hardy, if living at the time of my death, the sum of Five Thousand Dollars, in appreciation of sincere friendship and honest business relations.

Eighth: I give, bequeath and devise to W. H. McCullough, if living at the time of my death, the sum of One Thousand Dollars, in appreciation of a loyal friend and employee.

Ninth: I give, bequeath and devise to E. M. Fisher, if living at the time of my death, the sum of One Thousand Dollars, in appreciation of true friendship and efficient and pleasant business relations. [196]

Tenth: I give, bequeath and devise to the Rotary Club of Yakima, Washington, the sum of Fifteen Thousand Dollars, to be used in its crippled childrens Activity, said sum to be held in trust by the Yakima First National Bank and the income from same, together with \$500.00 of the principal, to be paid to said Rotary Club annually.

Eleventh: I give, bequeath and devise to the Salvation Army, the sum of Thirty Thousand Dollars, to be used in their local relief work in the City of Yakima, said sum to be held in trust by the Yakima First National Bank and the income from same, together with \$500.00 of the principal, to be paid to the Salvation Army annually.

Twelfth: I give, bequeath and devise to the people of the City of Yakima the sum of Fifty Thousand Dollars to be used for the improvement of the Yakima Public Library.

Thirteenth: I give, bequeath and devise to the people of Yakima County, State of Washington, the sum of One Hundred Thousand Dollars, to be used under the direction of the Board of County Commissioners of Yakima County for the control and prevention of tuberculosis, said sum to be held in trust by the Yakima First National Bank, and the income from same, together with \$2500.00 of the principal to be paid to the County of Yakima annually.

Fourteenth: I give, bequeath and devise to the people of Yakima County, State of Washington, the sum of Forty Thousand Dollars, to be used for the



improvement of Painted Rocks Park, which was *gratitously* deed to Yakima County by the Northern Pacific Railway Company.

Fifteenth: I give, bequeath and devise to my beloved wife, Rose B. Larson, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10, Yakima Heights Acre Tracts, for her home during her lifetime. After her demise I give, bequeath and devise this property to the City of Yakima, Washington, forever, for the purpose of a public Art Gallery and Museum, to be maintained as such forever by the City of Yakima. To assist in such maintenance, I give, bequeath and devise to the City of Yakima, as a permanent endowment fund the sum of One Hundred Thousand Dollars, which sum is to be held in trust by the Yakima First National Bank and the income from same, to be paid to the City of Yakima annually and used as aforestated.

Sixteenth: I give, bequeath and devise to my beloved wife, Rose B. Larson, all the rest and residue of my estate, real, personal and mixed and all effects of every name and nature of which I may die seized or possessed, or which I shall have any interest in at the time of my decease, to hand and to hold the same to her and her heirs, forever.

Seventeenth: The executor of my estate shall have three years if necessary to liquidate enough property to pay all of the above bequests.

Lastly: I hereby nominate and appoint the Yakima First National Bank, of Yakima, Washington, the executor of my Last Will and Testament, and



hereby revoke all former wills made by me. [197]

In witness whereof, I have hereunto set my hand and seal this 31st day of May, in the year of Our Lord One Thousand Nine Hundred and Thirty Four.

A. E. LARSON (Seal)

The foregoing instrument, consisting of two pages besides this, was, at the date hereof, by the said A. E. Larson, signed and sealed and published as, and declared to be, his Last Will and Testament in the presence of us, who at his request, and in his presence, and the presence of each other, have subscribed our names as witnesses hereto.

GORDON CORWIN,

of Yakima, Washington

ALTA ADDINGTON,

of Yakima, Washington

L. R. RIGHTMIRE,

of Yakima, Washington [198]

RESPONDENT'S EXHIBIT F

In the Superior Court of the State of Washington  
In and for Yakima County.

No.

In the Matter of the Estate of A. E. LARSON,  
Deceased.

PETITION FOR APPOINTMENT OF ADMIN-  
ISTRATOR DE BONIS NON WITH THE  
WILL ANNEXED.

To the Honorable Court Commissioner of the above  
entitled Court:

The petition of Rose B. Larson respectfully shows

1.

That A. E. Larson died on or about the 7th day  
of June, 1934, at Seattle, King County, Washington.

2.

That said deceased at the time of his death was  
a resident of Yakima, Yakima County, Washington,  
and left an estate consisting of real and personal  
property in said county.

3.

That said deceased left a will bearing date the  
31st day of May, 1934, which said will has hereto-  
fore been duly admitted to probate. That Yakima  
First National Bank, a corporation, named as ex-  
ecutor in said will, duly qualified as such and from

the time of its appointment and qualification has duly administered said estate. The said executor has filed in this court an account of all its acts in relation to the administration of said estate and has tendered its resignation as such executor to this court, asking that its account be approved and that all of said estate be distributed except 15,000 shares of stock of Sunshine Mining Company, a corporation. Said executor has further asked that it be discharged from further responsibility under said trust and that its sureties be discharged from further liability on its bond. [199]

## 4.

That said estate is not in a condition to be closed as appears by the final and supplemental reports of Yakima First National Bank, a corporation, executor above referred to, and it is necessary that some fit and proper person be appointed to continue the administration of said estate as administrator de bonis non with the will annexed.

## 5.

That your petitioner is the surviving spouse and residuary legatee of said estate.

## 6.

That Shirley D. Parker is a resident of Yakima, Washington, and is a son of this petitioner. That he is duly qualified by law to act as administrator de bonis non with the will annexed, and is a fit and

proper person to be appointed as said administrator de bonis non with the will annexed.

Wherefore, your petitioner prays that Shirley D. Parker, of Yakima, Washington, be appointed administrator de bonis non with the will annexed of the within estate, and that the court fix the amount of his bond as such, and for such other and further order as to the court shall seem just in the premises.

ROSE B. LARSON  
Petitioner [200]

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[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF PORTIONS OF RECORD,  
PROCEEDINGS AND EVIDENCE TO BE  
CONTAINED IN RECORD ON REVIEW

To the Clerk of the United States Board of Tax  
Appeals:

Please prepare, transmit and deliver to the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, copies duly certified as correct of the following documents and records in the above-entitled cause, in connection with the petition for review by the said Circuit Court of Appeals for the Ninth Circuit heretofore filed by the petitioner on review herein:

1. Docket entries of the proceedings before the Board.

2. Pleadings before the Board:

(a) Petition and notice of deficiency, together with statement attached thereto.

(b) Answer.

(c) Amended petition.

(d) Answer to amended petition.

(e) Reply.

3. Board's opinion promulgated July 24, 1941.

4. Board's decision entered November 13, 1941.

5. Petition for review, together with proof of service of notice of filing petition for review and of service of a copy of petition for review.

6. Statement of evidence, together with exhibits attached, and Stipulation of Facts.

7. All orders of enlargement of time for the preparation of the evidence and for the transmission and delivery of the record. [not included in record] [201]

8. Statement of Points to be relied upon.

9. This Designation.

Said transcript to be prepared, certified and transmitted as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

J. P. WENCHEL,

Chief Counsel,

Bureau of Internal Revenue.

Service of a copy of the within Designation is hereby admitted and agreed to this 31 day of March, 1942.

H. B. JONES

Attorney for Respondent on Review.

CRM/esl: 3/1942 [202]

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[Endorsed]: No. 10131. United States Circuit Court of Appeals for the Ninth Circuit. Commissioner of Internal Revenue, Petitioner, vs. Rose B. Larson, Respondent. Transcript of the Record. Upon Petition to Review a Decision of the United States Board of Tax Appeals.

Filed May 8, 1942.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.



